

CALIFORNIA EMPLOYMENT SPOTLIGHT

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TEMPORARY STAFFING FIRMS SEE NO RELIEF AS GOVERNOR IS FORCED TO VETO BILL THAT WOULD HAVE ALLOWED FIRMS TO PAY EMPLOYEES WEEKLY

On October 14, 2007, California Governor Arnold Schwarzenegger rejected a proposed amendment to the California Labor Code that would have allowed temporary staffing agencies to pay employees on a weekly basis, rather than every time a project ends. The Governor supported the weekly pay change, but vetoed the bill because it created additional worker's compensation liability for staffing clients.

Current law arguably subjects temporary staffing employees to the same "termination pay" rules that apply to other California employees: they must be paid for all time worked **no later than** the day a temporary project ends, regardless of whether the employee is still retained by the agency for future projects. The same deadline arguably applies to temporary employees who are removed from a project at the request of a client. The California Supreme Court's decision last year in *Smith v. Superior Court*, 39 Cal.4th 77 (2006), sometimes referred to as the *L'Oreal* case, set the stage for the current debate. In that case, the Supreme Court held that a temporary hair model who worked one day assignments was "discharged" within the meaning of the Labor Code at the conclusion of every assignment, whether or not the model remained on staff with the agency for future modeling projects. Since the Labor Code generally requires "discharged" employees to be paid all accrued but unpaid wages on their last day of work, the *L'Oreal* decision can be interpreted to mean that all temporary employees must be paid no later than the day their assigned project ends. This reading conflicts with the common practice of many temporary staffing agencies which pay temporary workers on a weekly basis, regardless of when any individual project ends.

After *L'Oreal*, the American Staffing Association, California Staffing Professionals, and other temporary agencies sponsored a bill that sought to amend the Labor Code to avoid the case's burdensome result. Assembly Bill 1710, which received overwhelming bipartisan support in the state Assembly in a 61-9 vote and was passed by the Senate in September of 2007, would have added Section 201.3 to the Labor Code to allow employees of temporary services employers to be paid on a weekly basis, regardless of the day on which any given assignment ends. The proposed legislation would have relieved temporary staffing agencies from the administrative burden of



paying employees on an irregular, unpredictable basis and the dilemma of figuring out how to pay employees who finished a project on a client site on the day of completion, often late at night and with little or no advance notice.

However, on October 14, 2007, Governor Schwarzenegger vetoed the proposed bill. According to a veto message posted on the Governor's website, while the Governor supported the intent behind clarifying compensation for temporary employees, the Governor did not approve of other aspects of the bill which would have imposed joint and several liability for workers' compensation coverage of temporary employees on employers who contract with staffing agencies.

Although the Governor's veto of Assembly Bill 1710 marks a loss for temporary staffing agencies, the Governor's recent vetoes of other employment-related bills signal a partial return to sanity in California. In total, the Governor vetoed 10 labor and employment measures on October 14th, many of which favored employees. In vetoing these bills, the Governor repeatedly stated his desire to avoid unwarranted burdens on California employers.

For example, the Governor vetoed a bill that would have extended the statute of limitations for wage discrimination claims from two to four years and would have required employers to maintain wage and job classification records for five years rather than two years, stating in his veto message that he was opposed to other provisions of the bill that would have allowed employees bringing minimum wage complaints before the Labor Commission to recover liquidated damages. The Governor also vetoed a bill that would have expanded the scope of unpaid leave under the California Family Rights Act to allow employees to take leave to care for adult children, siblings, grandparents, grandchildren, parents-in-law, and domestic partners. In his veto message, the Governor stated that the bill would have considerably expanded leave laws at a great expense to employers.

The Governor's actions reveal his intent to correct California's historical and much maligned "pro-employee" slant. In his words, "many California-only standards in areas such as family leave, overtime, and meal and rest periods have been developed haphazardly and have resulted in needless litigation that has created a perception that California is not friendly to business." Recognizing the economic costs incurred when frustrated employers abandon the state, the Governor has done his part to level the playing field.

For more information about compensating temporary employees in California, please contact the Hogan & Hartson attorney with whom you work or an author listed below.

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