



## STIMULUS PACKAGE CREATES NEW COBRA OBLIGATION FOR EMPLOYERS

**M**id-February, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (also known as "The Stimulus Package Act.") This stimulus package is expected to be the first step in giving our troubled economy some relief, and provides benefits for *both* employers and employees. A 65% subsidy on COBRA health insurance premiums will be available for eligible employees who are affected by involuntary termination, including layoff. Employees who retire or resign their employment, although eligible for COBRA, are NOT eligible for the subsidy. The subsidy will take the form of a payroll tax credit paid directly to employers.

**Beginning on March 1, 2009**, eligible individuals can begin to sign up for this subsidy. To be eligible, the employee must have been subject to involuntary separation between September 1, 2008 and January 1, 2010. Eligible laid off employees who did not elect COBRA after losing their jobs will have 60 days to sign up for the subsidy. Employees who earn more than \$145,000 (or \$250,000 for couples) per year are not eligible for the subsidy. Those eligible employees who have already elected COBRA and have been paying 100% of the required premiums will notice a decrease in their payments come March 1, 2009. The subsidy is available until the earlier of the following: employee becomes eligible for another employer-sponsored health plan or for a period of nine months.

Employers are already obligated to issue COBRA notices to departing employees. But now, **as a result of the new law, starting March 1st the COBRA notice will need to include information about the new subsidy.** Employers must send such notices to all employees who have already separated, as well. Within the next 30 days, the U.S. Department of Labor is expected to draft a model notice.

**PRACTICE TIP:** For assistance with drafting the new COBRA notice for eligible employees, please contact Elizabeth Koumas at (619)398-8301 or [ejk@koumaslaw.com](mailto:ejk@koumaslaw.com).

### INSIDE THIS ISSUE:

<b>Stimulus Package Creates New COBRA Obligation for Employers</b>	<b>1</b>
<b>Other Employment-Related Stimulus Effects</b>	<b>2</b>
<b>Governor Signs Employment and Labor Bills</b>	<b>2</b>
<b>Anti-Retaliation Protections Extended by Supreme Court</b>	<b>3</b>
<b>New Whistleblower Protection– The McCaskill Amendment</b>	<b>3</b>
<b>Family Responsibility Discrimination....Is It Prohibited?</b>	<b>4</b>

(Continued from page 1)

## OTHER EMPLOYMENT-RELATED STIMULUS EFFECTS

The new Stimulus Act also provides other boosts to our country's financial status which impact the workplace, including the following:

### Tax Credits

Eligible employees will receive tax credits, up to \$400 per individual and \$800 per couple, which are expected to be distributed on a weekly basis beginning around June 2009. Employees earnings less than \$75,000, and couples earning less than \$150,000 will be eligible for this tax credit. The credit will amount to approximately \$13 per week, and will take the form of a reduced federal income tax withholding from an employee's paychecks. Workers making \$75,000-\$95,000 (\$150,000-\$190,000 for couples) will receive a prorated credit amount.

### The Employ American Workers Act

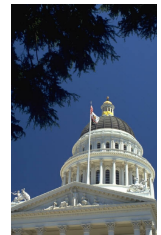
The Employ American Workers Act, also part of the stimulus package signed into law by President Obama, forbids employers who receive funding under the Troubled Assets Relief Program (TARP) from hiring additional H1-B foreign workers *unless* the employer has complied with the H1-B "dependent employer" rules. Starting in 2008, the TARP began providing assistance to certain companies in financial trouble. Under the Employ American Workers Act, employers receiving TARP funds will have to attest that no U.S. worker in a comparable position have been laid off during the 90-day period prior to filing an H1-B petition to hire a foreign worker.

### Extended Unemployment Benefits

The stimulus package also extends a current program an additional nine months, which provides individuals with an additional seven weeks of unemployment insurance benefits. The stimulus law also increases weekly unemployment checks by \$25. Further, individuals will owe no federal income tax on the first \$2,400 of unemployment insurance benefits received.

## GOVERNOR SIGNS EMPLOYMENT AND LABOR BILLS

**O**n February 20, 2009, Governor Schwarzenegger signed Senate Bill 9, which pertains to labor compliance for Public Works and Assembly Bill 2, which relates to Alternative Workweek Schedules.



**Senate Bill 9:** Existing law defines "public works," for purposes of regulating public works contracts, as construction, alteration, demolition, or repair work (among other things) that is performed under contract and paid for, in whole or in part, with public funds. According to current law, all workers employed on public works must be paid no less than the general prevailing rate per diem wage for work, except for public works projects of less than \$1000.

This new law amends certain sections of the Public Contract Code and adds a section to the Water Code

(Continued on page 3)

(Continued from page 2)

relating to public works. According to a letter authored by the Governor, explaining the rationale behind the SB 9's passage, he commented on the continued litigation over the Legislature's Constitutional authority to impose prevailing wage obligations on municipal projects of charter cities, which is yet to be determined by the courts, and is unaffected by this bill.

SB 9 narrows the potential prevailing wage obligations for charter cities involving work on water, sewer or storm drain systems that have been extended to disadvantaged communities. The Governor's letter further states that the Legislature's uncodified findings in the bill clarify that should it be found that the Legislature lacked authority to impose prevailing wage obligations on municipal projects, the mere extension of the water, sewer or drain systems into disadvantaged communities will not itself subject any further work on those systems within the charter city's boundaries to prevailing wage obligations.

**Assembly Bill 2:** Existing law authorizes employers to propose to employees alternative workweek schedules ["AWS"] (*no more than 10 hours a day in a 40 hour workweek without the payment of overtime compensation*) that may either be a single, standard work schedule, or part of a menu of work schedule options. Under current law, 2/3 approval by secret ballot in an election held for the work unit affected is needed for adoption of the AWS, pursuant to the requirements set forth in the Wage Orders.

This bill defines "work unit" for purposes of the new provisions, and would allow inclusion of a regular schedule of an 8-hour days to be in the menu of work schedule options, with specified overtime compensation addressed with that option. Where a menu of work schedule options is adopted, the bill also authorizes employees to move from week to week, from one work schedule to another on the adopted menu of options, with the consent of the employer.

**PRACTICE TIP:** Employers considering proposal of Alternative Workweek Schedules should review the specific procedural mandates to ensure compliance in the election process, and avoid risk of improper adoption and exposure to payment of overtime compensation. For assistance with AWS elections, contact Ms. Koumas at [ejk@koumaslaw.com](mailto:ejk@koumaslaw.com) or (619)398-8301.

## ANTI-RETALIATION PROTECTIONS EXTENDED BY SUPREME COURT

The U.S. Supreme Court has extended the protections afforded under our federal anti-retaliation law. In *Crawford v. Metropolitan Government of Nashville and Davidson County*, the high court ruled that Title VII's anti-retaliation provision extends to an employee who speaks out about discrimination while answering questions during an employer's internal investigation.

The employer argued that Title VII protects only employees who either: (1) initiate a harassment claim, or (2) participate in an investigation following a formal Equal Employment Opportunity Commission (EEOC) complaint. The U.S. Supreme Court, however, ruled that Title VII's anti-retaliation provisions cover employees who disclose harassment or discrimination even where the employee does not lodge a formal complaint or is simply responding to questions in an internal investigation.

## New Whistleblower Protection– The McCaskill Amendment.

The Stimulus Package passed by President Obama did not include advocate-proposed measures for strong whistleblower protection. This was surprising given that federal employees are often the first

(Continued on page 4)

(Continued from page 3)

people to notice fraud and other abuses by government contractors. Nonetheless, a critical whistleblower protection amendment introduced by Senator Claire McCaskill, amends the Economic Stimulus Bill. The provisions of the amendment add protections for government contractor employees who report wrongdoing to their supervisors, and protections for private contractors and state and local government workers who blow the whistle on waste, fraud, and abuse in stimulus spending.

## FAMILY RESPONSIBILITY DISCRIMINATION... IS IT PROHIBITED?



“Family Responsibility Discrimination” is not yet prohibited in California. This term, although related to sex and pregnancy discrimination, really encompasses a broader concept that employers are biased against primary family care providers and new parents. A 2007 bill would have added “familial status” to the protected categories under the Fair Employment and Housing Act, and even passed in the California legislature. However, Governor Schwarzenegger vetoed the bill. Since next year is the Governor’s last term in office, employers may see this bill resurrect under a new administration. Stay tuned.

**PRACTICE TIP:** Employers should protect themselves by providing training for all managers and supervisors regarding pregnancy and gender discrimination, and make sure all policies are being enforced consistently.

## FUTURE SEMINARS

### BEST PRACTICES FOR DISCIPLINE & LAYOFFS

Elizabeth Koumas regularly provides legal updates at the monthly luncheon meeting of the East County Personnel Association.

**Date:** May , 2009 **Time:** 11:30 a.m. to 1:00 p.m.

**Location:** The Brigantine Restaurant, La Mesa

For more details about the agenda or registration information, contact Elizabeth J. Koumas at [ejk@koumaslas.com](mailto:ejk@koumaslas.com). For more information about membership in East County Personnel Association, please check the Association’s website at [www.ecopa.net](http://www.ecopa.net)



### SUBSCRIBE NOW!

If you know anyone who would like to receive our complimentary newsletter by e-mail, they should subscribe through the firm’s website, at [www.koumaslaw.com](http://www.koumaslaw.com).

*The articles presented herein are intended as a brief overview of the law and are not intended to substitute as legal advice. Any questions or concerns regarding any statute or case law should be addressed to a licensed attorney. Copyright © 2009 by Koumas Law Group. All rights reserved.*