

New California Legislation for 2005 – Domestic Partner Rights and Mandatory Sexual Harassment Training

How California's Recently Enacted Domestic Partner Law May Impact Employers

On September 19, 2004, Governor Schwarzenegger signed Assembly Bill 205, thereby enacting the California Domestic Partner Rights and Responsibilities Act of 2003 ("the Act"). The provisions of the Act become effective January 1, 2005. This Act will impact employers based in California, as well as those employers who are based elsewhere but have employees working in California.

The Act amends the provisions of a variety of California codes. The Family Code will be amended to include a provision that reads as follows:

297.5(a) Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. (Emphasis added.)

The initial concern for employers, of course, is whether the Act requires employers to provide benefits to all registered domestic partners of their employees. While the general provision above does make reference to "benefits," that language is modified by the phrase "under law." There is further elaboration stating that benefits "under law" shall be extended to registered domestic partners regardless of the nature of the "law" under which the benefits arise.

Given the legislature's inclusion of the modifying language concerning benefits, it does not appear that the Act, standing alone, will require private employers to extend health benefits to registered domestic partners. However, private employers need to ascertain whether they are covered by any law, including state, county or city law or ordinance, that requires provision of such benefits.

More sweeping, however, is new Family Code section 297.5(h), which provides:

No public agency in this state may discriminate against any person or couple on the ground that the person is a registered domestic partner rather than a spouse or that the couple are registered domestic partners rather than spouses, except that nothing in this section applies to modify eligibility for long-term care plans. . . .

The foregoing provision likely will require public employers to provide health and other benefits to the registered domestic partners of their employees.

The Act also has important potential impact upon domestic partners' rights to a division of retirement plan benefits held by employees under a retirement plan. The issue of whether the Act is effective as to employee benefit plans (both retirement and health and welfare plans) that are governed by the federal Employee Retirement Income Security Act of 1974 ("ERISA") is likely to be the subject of litigation. Employers will have to consider the likely ERISA pre-emption challenges and the impact of the federal Defense of Marriage Act ("DOMA") on such litigation before deciding on a course of action with respect to the Act. Specifically, how would domestic partners be granted the same rights under an employer's benefit plans when DOMA and its interaction with the Internal Revenue Code and ERISA may not allow such treatment?

The Act has a severability clause that provides that if any provision of the Act is found to be unenforceable, the remaining provisions will remain effective.

Employers should confer with their employment and benefits counsel, and with their insurance carriers, to determine their obligations under law, if any, to extend benefits to domestic partners and to assess the expense associated with such action.

Certain California Employers Now Required to Provide Sexual Harassment Training for Their Supervisors

On September 29, 2004, Governor Schwarzenegger signed Assembly Bill 1825 ("AB 1825") into law, creating an affirmative obligation on the part of certain California employers to provide their supervisors with sexual harassment training. The law takes effect January 1, 2005.

California's Fair Employment and Housing Act ("FEHA"), found within California's Government Code section 12925 *et seq.*, prohibits unlawful harassment and discrimination in employment. Existing law provides that all employers are obligated to "take all reasonable steps" to prevent unlawful harassment from occurring. (Government Code section 12940(j)(1)) Many employers already conduct periodic training as one of the "reasonable steps" designed to prevent harassment. AB 1825 amends FEHA by adding a new statutory provision that specifically requires that certain employer conduct sexual harassment training.

Under AB 1825, employers that have 50 or more employees and/or independent contractors within the state of California are required to provide their supervisors with two hours of sexual harassment training every two years. The training to be provided shall be classroom or "other interactive" training methodology. Supervisors who received compliant training in 2003 or 2004 need not be trained again until 2006. However, all other newly hired supervisors, or persons being promoted into supervisory positions, must receive the two hours of training within six months of their hire or promotion. The new provisions are encompassed by the new statute, Government Code section 12950.1.

Under the bill's provisions, the training provided to supervisors must be conducted by persons who have knowledge and expertise in the prevention of harassment, discrimination and retaliation. The training must include content concerning federal and state laws regarding sexual harassment, the types of conduct that are prohibited, how to prevent and correct sexual harassment and the remedies available to a victim of sexual harassment. The training must also include practical examples.

For Further Information

If you have any questions about the information in this Alert, please contact Jennifer A. Kearns at 619.744.2242 or jkearns@duanemorris.com or the lawyer in the firm with whom you are regularly in contact.

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