

## Areas of Practice

Business Litigation

Civil Litigation & Trials

Employment / Labor

Healthcare Litigation

Premises Liability Litigation

Product Liability Litigation

Professional Liability Litigation

Real Estate Litigation

Restaurant / Hospitality Litigation

Retail Litigation

12250 El Camino Real, Suite 350 San  
Diego, CA 92130  
Tel 858-755-8500 | Fax 858-755-8504

9841 Airport Boulevard, Suite 1030  
Los Angeles, CA 90045  
Tel 310-649-5772 | Fax 310-649-5777

[www.pettitkohn.com](http://www.pettitkohn.com)

## I.

### ADMINISTRATIVE/LEGISLATIVE UPDATE

#### California Health Care Reform Moves Forward

On December 17, 2007, ABX1-1, which would require California residents to purchase health insurance and require health insurance vendors to provide coverage to all California residents regardless of pre-existing medical conditions, was passed by the State Assembly. The legislation, which is supported by Governor Schwarzenegger, would also require employers to either provide medical benefits to their employees or pay into a state-operated health insurance pool.

If the Senate approves the bill, it would most likely still need to be approved by a referendum of California voters. Enactment by the Senate, where opposition has been growing, however, is not a foregone conclusion.

#### Minimum Hourly Pay Rate

##### For "Computer Professionals" Lowered

California law sets forth an exemption whereby certain computer professionals need not be paid overtime. California law generally requires that the employee be primarily engaged in work that is intellectual or creative, and that the employee be paid at least a certain hourly compensation. Effective January 1, 2008, the hourly minimum compensation was decreased from \$49.77 to \$36.00.

#### Punitive Damages Bill

SB 423 (Harman) would cap punitive damages in California cases to an amount no greater than three times the compensatory damage award.

#### Arbitration Again Under Attack

Two separate federal pieces of legislation (HR 3010 and S 1782) are currently making their way through the U.S. Congress. These bills, both entitled the "Arbitration Fairness Act of 2007," would prevent employers from requiring employees to agree to arbitrate future employment disputes as a condition of employment. Both bills are currently in committee.

#### New I-9 Form Now in Effect

Beginning December 26, 2007, employers must utilize the new I-9 form relating to employment eligibility verification. The new form can be acquired at [www.uscis.gov](http://www.uscis.gov).

## II.

### JUDICIAL UPDATE

#### NLRB Upholds Restrictions On Use Of Company E-Mail By Union Members

On December 16, 2007, the National Labor Relations Board (“NLRB”) ruled that an employer may prohibit workers from using its e-mail system to conduct union business. The ruling was issued with respect to a dispute in which a Eugene, Oregon newspaper sought to prohibit a union organizer from using the company’s e-mail system to urge employees marching in a town parade to wear green in support of the union.

The NLRB ruled in favor of the employer and set forth a standard for determining what employer-imposed e-mail use restrictions could constitute unfair labor practices. The NLRB held that as long as the e-mail policy did not “specifically” discriminate against the union, the policy would be upheld. The NLRB offered the following examples of e-mail policies that would be unlawful:

Those that permit employees to use e-mail to solicit for one specific union, but not for another; and

Those that permit anti-union workers, but not pro-union workers, to utilize the e-mail system to disseminate their positions.

On the other hand, it would be acceptable for a company to make a distinction between charitable and non-charitable solicitations (allow solicitations for organizations such as the Red Cross, but to prohibit solicitations involving a union).

#### The Court Holds That The Statute Of

#### Limitation For Waiting Time Periods Is One Year

California Labor Code section 203 (“section 203”) provides that if an employer fails to timely pay all compensation due to an employee who has resigned or been discharged, the employer will be subject to “waiting time penalties” equal to one full-day’s pay for each day payment is delayed. Section 203 limits the penalty to 30 full days of pay. In *McCoy v. Superior Court of Orange County*, a California Court of Appeal determined that any lawsuit to recover section 203 waiting time penalties must be filed within one year from the time the wages become due. It should be noted, however, that this one-year limitation period only applies to claims in which penalties, but not unpaid wages, are sought. In claims seeking payment of unpaid wages and waiting time penalties, the longer statute of limitation (either three or four years, depending on the form of the claim) will be applicable for the waiting time penalty claim.

#### “Sporadic” Sexual Incidents Not Enough to Create a Hostile Work Environment

In *Mokler v. County of Orange*, a California Court of Appeal held that three sexually-related advances by a supervisor over a five-week period did not create a “hostile work environment” for purposes of establishing sexual harassment liability. The court held that the advances, which did not involve “extreme sexual touching or physical threats” were rude and inappropriate, but not sufficiently pervasive to alter the terms and conditions of the employee’s employment.

*This is Pettit Kohn Ingrassia & Lutz PC’s monthly employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, or Cara Patton at (858) 755-8500 or Eric DeWames at (310) 417-1136.*

*We are dedicated to providing the highest quality legal services and obtaining superior results in partnership with those who entrust us with their needs for counsel.*

*We enjoy a dynamic and empowering work environment that promotes teamwork, respect, growth, diversity, and a high quality of life.*

*We act with unparalleled integrity and professionalism at all times to earn the respect and confidence of all with whom we deal.*

12250 El Camino Real, Suite 350  
San Diego, CA 92130  
Tel 858-755-8500 | Fax 858-755-8504

9841 Airport Boulevard, Suite 1030  
Los Angeles, CA 90045  
Tel 310-649-5772 | Fax 310-649-5777

[www.pettitkohn.com](http://www.pettitkohn.com)