

Areas of Practice

Business Litigation

Civil & Trial Litigation

Employment & Labor

Personal Injury

Product Liability

Professional Liability

Restaurant & Hospitality

Retail

Transportation

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I.

LEGISLATIVE/ADMINISTRATIVE UPDATE

CHIPRA Notice to Provide Employees

Under the federal Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA"), any employer who offers group health coverage to employees must provide notice to those employees of state health insurance premium assistance for dependents for which they may be eligible.

This notice must be provided by the later of: (1) the first day of the first plan year after February 4, 2010; or (2) May 1, 2010. Civil penalties of up to \$100 per day may be assessed for each day that the notice is not provided.

CHIPRA was signed into law last year by President Obama and is a program that provides assistance to parents in securing health coverage for their children. California's Healthy Families Program is the state program that co-funds and administers the federal Children's Health Insurance Program.

The U.S. Department of Labor ("DOL") released model notices, which must be provided to all employees working in California (and any other state that provides premium assistance for children), regardless of where the employer is headquartered. A copy of the model notice can be downloaded from the DOL's website, www.dol.gov.

II.

JUDICIAL UPDATE

California Appellate Court (Again) Tackles Enforceability of Arbitration Agreements

In *Dotson v. Amgen, Inc.*, the California Court of Appeal for the second appellate district held that an employment contract that limited discovery in an arbitrated dispute between the parties but also authorized the arbitrator to expand discovery upon a showing of need was not unconscionable.

Darrell Dotson ("Dotson"), the plaintiff, worked as an attorney for Amgen, Inc. ("Amgen") under an employment contract which was accompanied by an arbitration agreement ("Agreement"). One of the terms of the Agreement provided that, in the event of arbitration, each party could depose one individual as well as any expert

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witness designated by another party. The Agreement further provided, however, that the arbitrator could expand discovery upon a showing of need. When Amgen subsequently discharged Dotson and Dotson sued for wrongful termination, Amgen moved to enforce the Agreement. Dotson objected.

The trial court found that the Agreement's discovery provision was substantively unconscionable, declined to sever the provision, and denied Amgen's motion. The Court of Appeal reversed, concluding that the language permitting the arbitrator to expand discovery upon a showing of need "removed any taint of [substantive] unconscionability" from the Agreement. As the court explained, "arbitration is meant to be a streamlined procedure. Limitations on discovery, including the number of depositions, is one of the ways that streamlining is achieved." Moreover, "'adequate' discovery not does mean 'unfettered' discovery." Additionally noteworthy to the court was the fact that the arbitrator's power to permit further discovery was not limited beyond a party's showing of need.

While the court acknowledged that procedural unconscionability was present to the extent that the employment offer (and accompanying requirement that Dotson sign the Agreement) was presented on a "take-it or leave-it basis," the fact that the Agreement was not overly-long and was written in clear, unambiguous language, among other things, weighed against a finding of invalidity.

Because the Agreement was not unenforceable, the court remanded the case to the trial court so it could issue an order granting Amgen's motion to compel arbitration.

Invalid Contract Cannot Prevent \$615,000 Judgment

In *Pellegrino v. Robert Half International, Inc.*, Robert Half International ("RHI"), a staffing firm, attempted to mandate a provision that employees must bring all claims they may have against RHI within six months of discovering the issue. The provision was designed to limit employees to a shorter period for filing claims than required under California law.

Six former employees who worked for RHI as account executives subsequently sued RHI, alleging that they were misclassified as exempt employees and were improperly denied commissions, meal periods and accurate wage statements.

RHI argued that the employees' claims were barred by the limitations on claims provision in their respective employment contracts. Both the trial court and the California Court of Appeal ruled that the three-year statute of limitations applicable to wage and hour claims under California law is grounded in fundamental state public policy and cannot be waived. Thus, the court upheld a \$615,000 award to the employees for back overtime wages, commissions, missed meal period premiums and penalties.

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, Robert Hudock, Tyler Theobald, Jenna Leyton, Andrea Kaplan, Vanessa Maync or Christine Mueller at (858) 755-8500 or Eric DeWames or Mark Bloom at (310) 649-5772.