

“Bounty Hunter” Law, Sexual Harassment Liability

By Leonard Brazil, Esq.

January 2004

“Bounty Hunter” Law

Senate Bill 796 has been referred to as the “bounty hunter” law and states that every violation of a Labor Code statute shall result in a monetary penalty against the employer. (Previously, some Labor Code violations did not result in any monetary penalty.) What makes the new law such a looming threat to employers is that an employee can file suit not only on his own behalf, but also on behalf of other employees whose rights were also violated (even if those other employees have not consented to participate in the action). The expansive right to sue on behalf of other employees makes it similar to a class action type suit. Of equal concern is that a prevailing employee may recover attorneys’ fees from the employer. The practical effect is that contingency fee lawyers will have a tremendous incentive to seek out employees willing to sue employers for even minor Labor Code violations, such as the failure to file with the Department of Labor Standards Enforcement the form of employment application used if the applicant is required to sign it. (Hence, the name “bounty hunter” law.)

What You Should Do:

In that even minor non-compliance with the Labor Code could trigger a class action type lawsuit and a claim for attorneys’ fees, employers should conduct employment law audits as soon as possible to ensure that their employment practices and procedures are in legal compliance. Employers should also be sure that their Employee Manuals are up to date.

Increased Liability for Sexual Harassment

Assembly Bill 76 was passed in response to a Court of Appeals case that held employers were not liable under the California Fair Employment and Housing Act when an employee is subjected to sexual harassment by a non-employee. As a result of this new legislation, an employer may be held liable to an employee for sexual harassment by a third party, such as a customer, vendor or, arguably, any third party if the employer knew or should have known of the harassment and failed to take reasonable steps to prevent it.

What You Should Do:

Employee Manuals should be modified to make clear that the company also does not tolerate sexual harassment of its employees by non-employees and that the company will take action to enforce that policy. Consideration should also be given to posting such a policy statement in an area of the workplace where it can be seen by vendors, delivery personnel, customers and other third parties. In that the law would arguably require employers to take reasonable action to prevent sexual harassment of its employees by customers of the company, consideration should also be given to adding a non-harassment policy in contracts and purchase orders, although one would have to approach that in a delicate manner.