



LEGAL BRIEFING

California Employers Face Modest Legislative Changes In 2006

By Thomas H. Reilly

As a byproduct of the heated political debate over ballot propositions, and the presence in Sacramento of a Governor sympathetic to the challenges already facing California businesses, 2005 proved to be a relatively uneventful year for legislative changes affecting California employers. The bills passed and signed into law implement modest changes, and compliance should pose no significant obstacles for employers:

- **SB 101 – Use of Social Security Numbers.** This bill clarifies existing law and requires that employers remove social security numbers from pay stubs by January 1, 2008. In their place, employers may use the last four digits of the employee's social security number or an identification number other than the employee's social security number.
- **AB 1093 – Direct Deposit of Final Wage Payments.** This bill authorizes employers to pay final wages at the time of discharge or resignation by direct deposit, provided there is a pre-existing authorization signed by the employee. The bill also clarifies that computer software employees who qualify for overtime exemption may be compensated at an hourly rate of at least \$45.84, or at the annualized full-time salary equivalent.
- **AB 1311 – Substitute Service of Process by Labor Commissioner.** Under existing law, the Labor Commissioner must serve an employer with any complaint, decision or award issued against the employer by personal service or first class mail. This bill allows the Labor Commissioner to serve such documents by leaving a copy at the home or office of the person

being served and thereafter mailing a copy to the person at the place where the copy was left.

- **AB 1669 – Time for Minors to File Charges of Discrimination.** This bill extends the time for minors to file charges of discrimination to one year after the aggrieved employee attains the age of majority.
- **AB 1734 – Entertainment Industry Exemption from Meal Period Laws.** Under existing law, employees who work five or more hours in a workday must receive an unpaid meal period of not less than 30 minutes, and employees who work ten or more hours in a workday must receive an additional unpaid meal period of not less than 30 minutes, with minor exceptions. Motion picture and broadcast employers are exempt from statutory meal period requirements when their employees are covered by collective bargaining agreements that provide for meal periods and monetary relief for employees who are denied meal periods.

Governor Schwarzenegger vetoed several bills that would have imposed significant burdens on employers, including AB 48, which would have raised the minimum wage to \$7.25 on July 1, 2006, \$7.75 on July 1, 2007, and annually thereafter at the rate of inflation.

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Unlicensed Contractor Performs
\$1 Million in Work For Free

"All Times" Really Means All Times

By J. Brian Morrow

Despite obtaining the proper license 18 days into a lengthy project, the California Supreme Court held that a contractor could not recover any of the \$1,000,000 in outstanding fees because it was not licensed "at all times" during the project. Interpreting a statute that is meant to protect owners from dishonest contractors, the Court strictly interpreted Business & Professions Code §7031, which prohibits a contractor from bringing a lawsuit for payment unless it was properly licensed at all times. **The lesson for contractors is that there are drastic consequences if the license(s) are not obtained before commencing work on a project.**

In *MW Erectors v. Niederhauser Ornamental and Metal Works Co., Inc.*, the project owner, Disney Corporation, contracted with general contractor, Turner Construction Company, to build Disney's Grand Californian Hotel. Turner subcontracted with Niederhauser to perform specialized metal work. Niederhauser in turn awarded two subcontracts to MW Erectors—one for structural steel work and one for ornamental steel work. On December 3, 1999, MW began work on the structural steel subcontract. On December 21—only 18 days later—MW obtained its structural steel contractor's license. In early January 2000, MW began work on the ornamental steel subcontract.

MW sued Niederhauser for approximately \$1,000,000 due under the structural steel subcontract and approximately \$350,000 due under the ornamental steel subcontract. The Court held that under the state's license law, an unlicensed contractor is barred from *any* recovery if it did not have a license in effect at all times during its performance of the work. Therefore, MW's lack of a license during the first 18 days of its performance meant

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For the second consecutive year, **Greg Dillion** has been recognized as one of Orange County's "Top 50 Super Lawyers," while **Tom Newmeyer** and **John O'Hara** were again named Southern California Super Lawyers. **Mike Cucchissi** and **Jane Samson** were also selected to the latest edition of the peer-review survey to be featured in the February 2006 issue of *Los Angeles* magazine.

We are proud to announce that **Charles S. Krolkowski** and **Jeffrey M. Dennis** have been named partners in our Newport Beach office. Chuck Krolkowski was previously of counsel and specializes in land use and eminent domain, while Jeff Dennis, formerly an associate, is a member of the firm's highly regarded litigation group.

The firm welcomes litigator **Joshua B. Bevitz** as an associate in our Walnut Creek office. Associates **Adriene M. Flores** and **Michael B. McClellan** are the latest additions to our transactional practice and **Manoosh Shakib** has joined the litigation team, all in Newport Beach.

Congratulations to Walnut Creek Managing Partner **Jan Gruen** and the Women's Council of the Home Builders Association

of Northern California, whose 4th annual Food & Gift Drive held during the holidays to benefit HomeAid shelter partners raised more than \$20,000 in cash (a four-fold increase from 2004), plus thousands of pounds of food, filling a 20-foot x 40-foot tent to capacity twice. Jan is President Elect of the Women's Council.

Mark Himmelstein, a partner in our Newport Beach office, was named to the 2006 board of directors of the Building Industry Association of Southern California, Orange County Chapter. In addition to serving on the board, he will co-chair the Membership committee. Mark also was named to the "Who's Who in the Building Industry" in the December 2005 edition of *Builder & Developer* magazine.

Senior transactional partner **Jane Samson** was named one of the most influential women in real estate by Real Estate Southern California, a prominent real estate trade publication. The annual listing by the publication this year recognizes 50 women who were nominated on the basis of a significant track record in various aspects of commercial real estate, or who have made a noticeable impact in the market, with additional consideration to those who have contributed to worthwhile social or industry causes. Jane's practice focuses on complex, high-profile transactions involving the acquisition, financing, development, leasing and sale of real property, which in 2004 totaled approximately \$1 billion.



(Unlicensed Contractors continued from page 1)

that MW could not recover any of the \$1,000,000 it was owed for the structural steel work. However, the Court also ruled that a contractor's lack of a license when it executes a contract does not bar it from recovery if it obtains a license prior to, and maintains the license during, its performance of work. As a result, MW could pursue its claim for \$350,000 for ornamental steel work because it became licensed prior to starting.

The *MW Erectors* decision demonstrates the severity of the licensing statute and the impact of the failure to obtain a license.

In summary, a contractor who is unlicensed at any time during its performance of work cannot sue for payment. Owners and contractors should be aware of the dramatic impact of this decision, which is potentially disastrous for unlicensed contractors and a windfall for the parties with whom they contract.

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About Newmeyer & Dillion LLP

Newmeyer & Dillion LLP, originally formed in 1984, is comprised of creative, highly motivated business attorneys who possess outstanding credentials, training and experience in their respective fields of practice. The firm represents a wide variety of clients, which include national and local financial institutions, real estate development companies, manufacturers and service organizations, as well as individuals.

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- *Business*
 - Unfair Competition/Trade Secret
 - Business & Professions Code §17200
 - Partnership Dissolution
 - Lender Liability
 - General Business Disputes
- *Real Estate*
 - Construction
 - Real Estate Finance
 - Environmental Warranty
 - Title
 - Inverse Condemnation and Eminent Domain
 - Government Tort Claims
 - Regulatory Takings
- *Labor & Employment*
 - Wrongful Termination
 - Employment Discrimination
 - Sexual Harassment
- *Insurance & Risk Management*
 - First and Third Party Coverage
 - First and Third Party Bad Faith
- *Products Liability*
- *Appellate Practice*

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- Shareholder, Partnership and Stock Option Plan Agreements
- Purchase and Sale of Businesses
- Business Dissolutions
- Employment and Independent Contractor Matters
- Licensing and Franchising Arrangements

Corporate Finance, Securities and Mergers & Acquisitions

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- Mergers, Acquisitions, and Leveraged Buyouts
- Public and Private Securities Offerings
- Federal Securities Law

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- Master Planned Community Developments and Community Associations
- Department of Real Estate and Other Regulatory Filings
- Construction Related Matters
- Military Base Reuse
- Due Diligence

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- Coordination of Loan Transactions for Borrowers

Land Use/Environmental

- Development Agreements
- Mitigation Agreements
- Subdivision Map Act
- Environmental Permitting