

What to Do About

PERSONNEL PROBLEMS

STATE

July 2008

CALIFORNIA EDITION

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HEALTH AND SAFETY TIP

Summer temperatures are soaring, which means employers must pay special attention to workplace hazards stemming from heat and sun. Check out Cal-OSHA's website at www.dir.ca.gov/dosh/heatillnessinfo.html for a variety of resources on heat illness prevention.

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California Supreme Court OKs Gay Marriage

On May 15, the California Supreme Court ruled that state laws limiting marriage to opposite-sex couples are unconstitutional. This landmark 4–3 decision grew out of San Francisco Mayor Gavin Newsom's controversial move in 2004 to allow gay couples to wed. The case is *In re Marriage Cases*, Calif. Supreme Court No. S147999 (2008).

The question the California Supreme Court considered was whether the state's failure to designate the official relationship of same-sex couples as marriage—rather than domestic partnership—violated the California constitution. The Court said that it did, which now means that the state must use the same term to denote state-sanctioned relationships for same-sex couples and opposite-sex couples.

Despite the new ruling, the firestorm over gay marriage in California isn't over. Already, opponents have collected signatures to place a constitutional amendment on the November ballot, stating that “only marriage between a man and a woman is valid or recognized in California.” If the high court's decision stands, however, California

joins Massachusetts to be the only two states to recognize same-sex unions.

What is the impact of the new case on the workplace? Existing state law prohibits discrimination on the basis of actual or perceived sexual orientation. And now, it will also be illegal to discriminate against an employee or applicant because he or she is married to someone of the same sex. Consistent with nondiscrimination requirements, employers will be required to provide equal spousal benefits and privileges that are required by California law or offered pursuant to the employer's own policies, regardless of whether the spouses are same or opposite sex. However, under the federal Defense of Marriage Act, marriage is defined as between a woman and a man, so a same-sex spouse cannot qualify as a spouse for purposes of federally mandated benefits (COBRA, retirement plans, etc.) and tax laws. Employers should also note that California domestic partnership protections remain the law for now. For details, consult the **DOMESTIC PARTNERSHIPS** section in your *What to Do About Personnel Problems in California* book.

DIR Focus on Workers' Comp Scofflaws

Employers who fail to carry workers' comp coverage or file a certificate to self-insure are the targets of a new California Department of Industrial Relations (DIR) enforcement initiative—the Insurance Coverage Program. Under this program, the DIR will identify workers' comp scofflaws by reviewing matching data from the Employment Development Department, the Uninsured Employers' Fund, rating agencies licensed by the California

Insurance Commissioner, and other sources.

And the identity of violators will be made public: By March 1 each year, the DIR plans to post a report on its website listing these employers. Learn about your workers' compensation insurance obligations in the **WORKERS' COMPENSATION** section of your *What to Do About Personnel Problems in California* book.

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What Is GINA and Why Should You Care?

President Bush signed the bipartisan Genetic Information Nondiscrimination Act (GINA) on May 21, and some have hailed it as a landmark law: Scientists & Engineers for America Action Fund called it “the first piece of forward-looking civil rights legislation the United States has ever passed.”

And, a major bill sponsor, Senator Edward M. Kennedy (D-MA), called GINA “the first major new civil rights bill of the new century.” It contains three kinds of employer restrictions: First, the law bars employers from discriminating on the basis of genetic information; then, it restricts employers’ acquisition of genetic information; and, finally, it requires employers to take specific measures to maintain the confidentiality of genetic

information. “Employers” under the law are public and private sector organizations, employment agencies, labor organizations, and training programs—a broad spectrum of those affected.

Exactly what is genetic information?

The new law defines such data as any information about (a) an individual’s genetic tests, (b) the genetic tests of the individual’s family members, and (c) the “manifestation of a disease or disorder” in the individual’s family members. Additionally, the (c) category covers evidence of all conditions, not just those assumed to be hereditary, and protection is not limited to an individual’s biological relatives. Again, the spectrum of protection is notably broad. When an employer possesses genetic information,

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Pregnancy: Normal or Problematic?

Attorney Bernard E. Jacques, a labor and employment law specialist at the Connecticut firm of Pepe & Hazard, points out that pregnancy is both normal and temporary. But it can cause problems in the workplace. Jacques notes that the number of women charging pregnancy discrimination has risen steadily and significantly over the past 10 years.

The latest charge, against Bloomberg L.P., is a class action suit alleging pregnancy bias against many women who did or do work for the financial services and media firm. In early May, 54 additional plaintiffs joined the class. And, this action is only the latest and largest of a string of discrimination and sexual harassment complaints filed against Bloomberg—which is owned by New York City Mayor Michael R. Bloomberg—since the 1990s.

Jacques explains that pregnancy bias claims generally fall into one of two categories: Either the plaintiffs allege that they were denied promotions or other opportunities, or they charge that they needed an accommodation during all or the latter part of their pregnancy, an accommodation that the employer refused to grant. The Bloomberg suit is in the first category—the women allege that male co-workers made insensitive comments and that the women’s careers were stalled or stopped.

It’s possible that most suits have been filed against Bloomberg because it is a very visible, very successful company that is perceived as having “deep pockets,” or the ability to pay large judgments against it. But, says Jacques, it’s also possible that the environment at

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