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# Elections Review of Selected 1972 California Legislation

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# Elections

## Elections; candidate qualifications

Elections Code §6401 (amended).

AB 1597 (Maddy); STATS 1972, Ch 320

Section 6401 of the Elections Code has been amended to state that no declaration of candidacy for a partisan office or for membership on a county central committee shall be filed, either by the candidate himself or by sponsors on his behalf unless: (1) at the time of presentation of the declaration and continuously for not less than three months immediately prior to that time, or for as long as he has been *eligible to register to vote* in the state, the candidate is shown by his affidavit of registration to be affiliated with the political party the nomination of which he seeks; and (2) the candidate has not been registered as affiliated with a political party other than that political party the nomination of which he seeks within 12 months immediately prior to the filing of the declaration.

Prior to amendment, Section 6401 required that the candidate show, by his affidavit of registration, affiliation with his political party for *three months* immediately prior to filing for candidacy in that party.

### COMMENT

Prior to the enactment of Chapter 320, it may have been impossible for a newly-enfranchised elector to qualify to run for partisan office or for membership on a county central committee. Except for §321, the Elections Code is silent as to when the minimum voting age must be attained in order to *register to vote* [See Legislative Counsel, Opinion No. 17073, Aug. 25, 1972]. Section 321, in outlining the required form for an affidavit of registration, provides that the "under-signed affiant, being duly sworn, says: I will be at least 21 years of age at the time of the *next succeeding election*" [In view of the adoption of the 26th Amendment to the U.S. Constitution, the affiant would be required to swear to being 18 years old at the time of the next succeeding election].

Since §6401 previously required a candidate to be *registered* (affiliated with his political party) for three months prior to *filing for candidacy*, the effect of these two sections was that a minor, who would

become 18 years of age less than three months prior to the final date for filing for candidacy, might become eligible to register too late to comply with §6401. For example, the existence of an intervening local election occurring before he reached 18 could preclude such minor from registering [CAL. ELECTIONS CODE §321], until registration for the local election was closed [CAL. ELECTIONS CODE §203], which could occur *within* three months of the final date for filing candidacy papers [CAL. ELECTIONS CODE §6490 *et seq.*].

The purpose of Chapter 320 was to allow such a minor to comply with §6401 without the necessity of meeting the three month requirement [Interview with Assemblyman Maddy, Fresno, California, August 5, 1972]. However, Bill Durley, author of the final amended version of AB 1597 and County Clerk of Sacramento County, stated that his office will construe the phrase "or for so long as he has been eligible to register to vote in the state" such that a person will be found to be in compliance with this provision in §6401 only if he has, in fact, registered on the first day he became eligible. This construction, although apparently proper pursuant to the face of the statute, will probably render Chapter 320 ineffective because of the difficulty encountered in ascertaining the first date of eligibility.

For example, what is the first date on which a minor qualifies to register to vote? As mentioned above, Elections Code §321 indicates that when a person registers to vote, he must declare that he will be at least 18 by the next succeeding election. In other words, a county clerk may refuse to register a person who will be 18 by the time of the general elections in November because of an intervening local election, at which time the applicant will *not* be 18. Therefore, it appears that a minor would first be eligible to register to vote immediately following the close of registration for the election preceding the election at which he will be 18 years old.

A similar problem in determining the first date of eligibility exists with regard to a person who moves to California from another state. It appears that to qualify under §6401, such a person would have to register to vote at the time he first establishes residence [See Legislative Counsel, Opinion No. 17073, August 25, 1972]. It may be noted here that the Supreme Court of California has held that no durational residence requirement in excess of 30 days may be constitutionally imposed [Young v. Gnos, 7 Cal. 3d 18, 496 P.2d 445, 101 Cal. Rptr. 533 (1972)].

These examples demonstrate the difficulty of ascertaining the first date a person may be eligible to register, and illustrate the probability

that the potential candidate will gain little benefit from the operation of the provision added to §6401.

### **Elections; voter registration procedure**

Elections Code §§203, 455, 456.5, 456.6, 459, 14660, 14662, 14665, 14666, 14667, 14801 (amended); §§282.5, 10012.4 (new). SB 840 (Moscone); STATS 1972, Ch 1356

Section 203 of the Elections Code has been amended to require registration of electors to be in progress at all times except during the *29 days* immediately preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Prior to amendment, registration was in progress at all times except during the *53 days* preceding the election.

Chapter 1356 adds Section 10012.4 to the Elections Code to provide that voters who register after the 54th day before an election need not be mailed sample ballots or statements of qualification but shall receive polling place notices, state ballot pamphlets, and notices that they are not receiving sample ballots nor statements of qualification of candidates. Chapter 1356 also adds §282.5 to the Elections Code to require all deputies and registration clerks to return all affidavits of registration and all books or pads in their possession containing stubs and spoiled or unused affidavit blanks on the 53rd day before an election, and to authorize them to apply for new registration materials for use until the close of registration.

Sections 455 and 459 of the Elections Code have been amended to require county clerks, upon written demand, to furnish to party central committees, no later than 7 days before a partisan election, copies (prepared by assembly districts) or the printed indices of voters who registered after the 54th day before the election (§455). If the clerk maintains tabulating cards or electronic data-processing tape containing the information set forth in the affidavits of registration, he shall furnish, not less than 7 days prior to a partisan election, one set of those cards or a copy of the tape of those voters who registered after the 54th day before the election (§459).

Chapter 1356 amends §§456.5 and 456.6 to require county clerks to furnish to the Secretary of State, either in the form of cards or electronic tape (§456.5) or an index of registered voters (§456.6), the information set forth in the affidavits of registration of voters. The information, with respect to voters who registered after the 54th day before the election, must be furnished no later than 7 days before each primary and general election.

Finally, Chapter 1356 amends §§14660, 14662, 14665, 14666, 14667, and 14801 to provide that an absentee ballot shall be counted if it is returned to any precinct board in the district in which the absent voter resides, prior to the close of the polls. Prior to amendment, the deadline was 5 p.m. of the day of the election.

#### **COMMENT**

In *Young v. Gnos* [7 Cal. 3d 18, 496 P.2d 445, 101 Cal. Rptr. 533 (1972)], petitioners brought mandamus proceedings in which they challenged the constitutionality of the 54-day precinct and 90-day county residence requirement for voting. The California Supreme Court held that both requirements, as set forth in the California Constitution, art. II, §1, as well as the closing date for registration in Elections Code §203, were in violation of the Equal Protection Clause of the Fourteenth Amendment and therefore invalid. The court concluded that no residency requirement in excess of 30 days may constitutionally be imposed. Chapter 1356 amends Elections Code §203 to bring the code into conformity with this decision.

#### **Elections; municipal elections—nomination papers and filing fees**

Elections Code §22836 (amended); §22843 (new).

SB 199 (Carpenter); STATS 1972, Ch 593

Chapter 593 amends §22836 of the Elections Code to increase the required number of signatures on nomination papers for candidates for city offices in cities of 1,000 persons or more, from no less than 5 nor more than 10, to no less than 20 nor more than 30.

Section 22843, added to the Elections Code by Chapter 593, specifies that a filing fee proportionate to the costs of processing a candidate's nomination papers as determined by the city council and set by ordinance, but not exceeding \$25, may be imposed, to be paid upon the filing of such nomination papers. Prior to the enactment of §22843, there was no provision authorizing the imposition of a filing fee for these city offices.

#### **Elections; city council districts**

Government Code §34898 (amended).

SB 153 (Dymally); STATS 1972, Ch 404

Section 34898 of the Government Code, as added by Chapter 707

of the Statutes of 1971, has been amended to provide that if the members of the governing body of a chartered city are *nominated* "by districts" or "from districts," as defined in §34871, such districts shall be of equal population according to the latest federal decennial census. Prior to amendment, §34898 applied only when members of the governing body of a chartered city were *elected* by or from such districts.

### COMMENT

In *Calderon v. City of Los Angeles* [4 Cal. 3d 251, 481 P.2d 489, 93 Cal. Rptr. 361 (1971)], the California Supreme Court dealt with the issue of whether the "one man, one vote" command of the equal protection clause requires that councilmanic voting districts be apportioned according to population, or whether it is satisfied if each district contains a substantially equal number of registered voters. The plaintiffs in *Calderon* argued that the "registered voter" basis results in substantial inequities, including overrepresentation of some districts and severe underrepresentation of others, especially those populated by racial and ethnic minorities [*Calderon* at 254, 481 P.2d at 490, 93 Cal. Rptr. at 362]. The California Supreme Court held that the equal protection clause of the United States Constitution demands that councilmanic voting districts be apportioned according to population, and not according to equal voter registration.

In an analogous case, the United States Supreme Court commented, "Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives" [*Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)]. Government Code §34898, when enacted in 1971, required districts to be of equal population according to the latest federal decennial census if councilmen were *elected* by their respective districts.

However, the question of equality of districts when councilmen are *nominated by district and elected at large* was left unanswered. Twelve of the 76 charter cities in California elect their councilmen in this manner [Interview with Bill Holliman, Assistant Legal Counsel, League of California Cities, Sacramento, California, Aug. 3, 1972]. Chapter 404 provides that districts must be of equal population if the councilmen are nominated by their respective districts but elected at large.

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#### See Generally:

- 1) CAL. GOV'T CODE §34871.
- 2) SATO AND VAN ALSTYNE, *STATE AND LOCAL GOVERNMENT LAW* 396 (1st ed. 1970).

## **Elections; circulation of municipal referendum petitions**

Elections Code §4051 (amended).

SB 1196 (Nejedly); STATS 1972, Ch 464

Section 4051 of the Elections Code provides that if a petition protesting the adoption of an ordinance is submitted to the clerk of the legislative body of the city within 30 days after the adoption of the ordinance, and is signed by the prescribed number of voters of the city, the effective date of the ordinance shall be suspended, and the legislative body shall reconsider the ordinance. After submission of the petition to the legislative body, the ordinance must either be entirely repealed or be submitted to the voters [CAL. ELECTIONS CODE §4052].

Chapter 464 has amended Section 4051 to require that the municipal referendum petition protesting the adoption of a city ordinance be circulated only by a qualified registered voter of the city.

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### **See Generally:**

- 1) CAL. ELECTIONS CODE §45.1.

## **Elections; municipal officer recall**

Elections Code §§27516, 27517, 27518, 27519 (amended); §27517.5 (repealed).

SB 189 (Grunsky); STATS 1972, Ch 592

Prior to the adoption of Chapter 592, Sections 27516 and 27517 of the Elections Code provided for the election of a successor to a recalled municipal officer to take place at the time of the recall election. The name of persons nominated for the office were placed on the recall ballots under the question of recall. The incumbent was recalled from office when the recall question succeeded and a candidate other than the incumbent was elected or qualified (Sections 27517 and 27517.5). Further recall procedures were specified in Sections 27517.5, 27518 and 27519.

Chapter 592 has amended and repealed these sections to provide for the separate election or appointment of a successor if the recall is successful. Section 27516 has been amended to provide that there shall be printed on the recall ballot, in addition to the question of recall, the following question: "If the recall prevails shall the (name of the legislative body) fill the vacancy or vacancies by appointment or call a special election for that purpose?"

Section 27518 has been amended to provide that if the recall pre-

vails and a majority of those voting on the question of filling the vacancy favor a special election for that purpose, the legislative body shall at its next regular meeting call an election to be held to fill the vacancy not less than 74 nor more than 89 days after the date of the order. If a regular municipal election is to occur not more than 104 nor less than 74 days from the date of canvassing of the vote, the legislative body may provide for filling the vacancy at such regular municipal election instead of at a special election. If a special election is not favored by a majority of the voters, the legislative body shall at once fill the vacancy by appointment. The person elected or appointed holds the office for the unexpired term of the former incumbent.

Section 27519 has been amended to provide that if a majority of the legislative body is recalled at the same election, the members recalled shall retain their offices until their successors are elected and qualified. Immediately after the canvass of votes, the clerk shall call a special election to fill the vacancies arising as a result of the recall election, which special election shall be held within 89 days after the canvass of votes of the election at which they were recalled. The clerk shall then perform the duties of the governing body of the city with respect to holding the special election, and shall canvass the vote and declare the results of the special election. If the clerk has also been recalled, then the board of supervisors shall perform his duties.

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**See Generally:**

- 1) *Baertschiger v. Leffler*, 36 Cal. App. 2d 208, 97 P.2d 501 (1939).
- 2) *Cohn v. Isensee*, 45 Cal. App. 531, 188 P. 279 (1920).
- 3) CAL. CONST. art. XXIII, §1.

## **Elections; recall of school district governing board member**

Education Code §1142 (amended).

AB 344 (Maddy); STATS 1972, Ch 229

Section 1142 of the Education Code has been amended to require the county clerk to call and set the date for holding a special election for recall of a school district governing board member, if the school board itself fails to call the special election within 30 days of notification by the clerk of the sufficiency of the recall petition.

The county clerk is required to set the date for holding the special election within the existing time periods prescribed in §1142(a).

### **COMMENT**

The provisions of this act are to be distinguished from the proce-



dures set forth in §§27207 and 27513 of the Elections Code which outline recall procedures for county and municipal officers.

Unlike procedures at the other levels, Section 1142 of the Education Code, as amended, requires the county clerk to call the special election if the school board fails to act. The clerk is not so authorized in county and municipal recall elections if the board of supervisors or the legislative body of the city fails to act.

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See Generally:

- 1) CAL. CONST. art. XXIII, §1.

### **Elections; petitions opposing recall of district officers**

Elections Code §§23625, 23627 (amended).

SB 754 (Marler); STATS 1972, Ch 652

Chapter 652 amends §§23625 and 23627 of the Elections Code, relating to recall procedure under the Uniform District Election Law [CAL. ELECTIONS CODE §23500 *et seq.*].

Section 23625, as amended, provides that upon receiving a recall petition certified as sufficient, the governing body shall forthwith issue an order stating that an election shall be held pursuant to this article to determine whether or not the voters will recall the officer named in the petition, *unless a petition opposing the recall of the officer* (certified as sufficient pursuant to §23600 *et seq.* and signed by a majority of qualified voters of the district) is submitted to the governing board within 50 days of such order. In the event that such a petition is timely filed, the recall election of such district officer will be cancelled. Prior to amendment, no provision for petitions opposing the recall of a district officer existed.

Chapter 652 amends §23627 to state that if, within five days of the order of notice of the election, a notice of intention to circulate a petition to cancel the recall election is filed with the governing body ordering the election, the order shall be revised to provide that the election shall be held in not less than 100 days nor more than 125 days after the making of the order. When no such notice of intention is filed, §23627 provides that a recall election shall be held not less than 80 nor more than 125 days after the making of the order of notice of the election.

# Employment Practices

## Employment Practices; safety investigations

Labor Code §6505 (amended).

AB 213 (McCarthy); STATS 1972, Ch 720

Prior to amendment, §6505 provided that whenever the Division of Industrial Safety learns or has reason to believe that any employment or place of employment is unsafe or injurious to the welfare of an employee, it *may*, on its own motion *or* upon complaint, summarily conduct an investigation with or without notice or hearings. After a *hearing with notice*, the Board may enter any necessary order pursuant to authority granted in Labor Code §6503.

As amended, §6505 *requires* the Division on receipt of a complaint from an employee, his legal representative or employer, to summarily investigate as soon as possible, but not later than three working days after receipt of the complaint. An exception to the three day time limit is provided where it appears to the Division from facts stated in the complaint that the complaint is intended to willfully harass an employer or is without reasonable basis. Complaints of serious hazards and conditions posing imminent danger to life and safety take priority over other complaints placed earlier in time, otherwise the three day time limit is applicable.

A further significant alteration to §6505 is the added provision that an employee who is discharged, threatened with discharge, demoted, suspended or in any other manner discriminated against in the terms and conditions of his employment because he has made a bona fide complaint to the Board of unsafe working conditions or work practices shall be entitled to reinstatement and reimbursement for any wages and work benefits lost as a result of such acts of the employer. Furthermore, any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor. It is also provided that upon request, the name of a person submitting a complaint shall be kept confidential by the Board.

**COMMENT**

This amendment makes it clear that, beyond a determination as to whether or not a complaint on its face is intended to willfully harass the employer or is without a reasonable basis, the Division of Industrial Safety is allowed no discretion regarding time of investigation. If the Division does not find the complaint was made with a willful intent to harass or without reasonable basis, it *must* investigate within three days. However, it is not clear whether the Division may refuse to investigate at all if it finds the complaint willfully intended to harass or without rational basis.

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**See Generally:**

- 1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §333 (7th ed. 1960), (Supp. 1969).
- 2) 7 OPS. ATT'Y GEN. 79 (1946).

**Employment Practices; safety investigations—contractors**

Labor Code §6321 (new); §6319 (amended).

SB 381 (Short); STATS 1972, Ch 705

AB 874 (McCarthy); STATS 1972, Ch 1386

Chapter 705 adds Section 6321 to the Labor Code to provide that the Division of Industrial Safety shall transmit to the registrar of contractors copies of any reports made in any investigation conducted pursuant to Section 6313 involving a contractor licensed by the registrar of contractors. Section 6313 authorizes the Division to investigate the cause of all industrial injuries resulting in disability or death which occur within the State in any employment or place of employment, or which directly or indirectly arise from or are connected with the maintenance or operation of such employment or place of employment.

Section 6319 states that no officer or employee of the Division of Industrial Safety shall divulge to any person not connected with the administration of Part 1 (commencing with Section 6300) any information that is confidential pursuant to the provisions of Chapter 3.5 of the Government Code (commencing with Section 6250), concerning the failure to keep any place of employment safe, or concerning the violation of any order, rule, or regulation issued by the Industrial Safety Board or the Division of Industrial Safety. Violation of this section is a misdemeanor.

Section 6319 has been amended to require the Division of Industrial Safety to write to the complaining party, or his representative, and to the employer, advising them as to the time the on-site inspection was

made, a description of the unsafe conditions found, requirements imposed to render the employment conditions safe, and the time given to comply. Confidential information and trade secrets shall be omitted. This section has been further amended to except from its prohibitions, the transmission of reports as specified in §6321.

### **Employment Practices; safety—first aid**

Labor Code §6401.5 (new).

AB 181 (Townsend); STATS 1972, Ch 362

Section 6401.5 has been added to the Labor Code to provide that every contractor on a construction project, including public works, is required to maintain adequate emergency first aid treatment for his employees. The term "adequate" is intended to mean sufficient to comply with the Federal Occupational Safety and Health Act of 1970 [29 U.S.C. §§651-678 (1970)], which specifies conditions or practices which are reasonably necessary or appropriate to provide safe or healthful employment and places of employment. Violation of this section would be a misdemeanor under Section 6414 of the Labor Code.

### **Employment Practices; safety tunnels**

Labor Code §7950 *et seq.* (new).

AB 1157 (Petrís); STATS 1972, Ch 1430

Chapter 1430 enacts the Tunnel and Mine Safety Act of 1972 [CAL. LABOR CODE §7950 *et seq.*], which was introduced by a legislative subcommittee on the Sylmar tunnel disaster. This Act provides specific safeguards which must be met in mines and tunnels, as defined (§7951), and classifies underground mines and tunnels as to degree of hazard (§7955). Chapter 1430 further specifies the powers and duties of the Division of Industrial Safety and the Industrial Safety Board under this act (§7990 *et seq.*).

### **Employment Practices; state employee organizations**

Government Code §3528 (amended).

SB 315 (Harmer); STATS 1972, Ch 516

Support: California State Employees' Association

Government Code §3528 provides that employee organizations shall have the right to represent their members in their employment relations with the state. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions

for the dismissal of individuals from membership. Chapter 516 amends Government Code §3528 to provide that nothing in this section shall prohibit any employee from appearing in his own behalf *or through his chosen representative* in his employment relations with the state. Chapter 516 also amends §3528 to provide that employment relations with the state expressly include grievances.

### COMMENT

In 1961 the Brown Act (Government Code §§3500-3509) extended to employees of "the various public agencies of the state" the right to form and join employee organizations which could represent others in their employment relations with the public agency employer. School employees have had a specific statutory right to be represented by employee organizations since the passage of the Winton Act (Education Code §13080 *et seq.*) in 1965 [CAL. STATS. 1965, c. 2041, at 4660]. In 1971 similar rights were recognized for state employees generally in Government Code §§3525-3536 [CAL. STATS. 1971, c. 254, at 401]. The more generally applicable provisions in Government Code §§3525-3536 should prevail over the Winton Act in regard to state college and university employees since they are not specifically included within the Winton Act [*See* CAL. EDUC. CODE §13081].

Under both the Government Code sections [CAL. GOV'T CODE §3529] and the Winton Act [CAL. EDUC. CODE §13084], it is provided that the scope of representation shall include all matters relating to employment conditions and employer-employee relations, including but not limited to, wages, hours, and other terms and conditions of employment.

Recently, in *Torrance Education Ass'n v. Board of Education* [21 Cal. App. 3d 589, 98 Cal. Rptr. 639 (1971)], the court held that under the Winton Act a school board could compel faculty employees, who are members of an employee organization, to attend faculty meetings at which matters relating to employment conditions and employer-employee relations (which broadly covers the field of education policy, objectives and methods) are discussed, without permitting the official representatives of the organization's negotiating council to be present.

Thus, the amendment to Government Code §3528 appears intended to assure that state college and university faculty may be represented by their negotiating council in the above situation as well as to prevent similar situations developing in regard to state employees generally.

This is in accord with the overall purpose of Government Code

§§3525-3536 which is to promote the improvement of personnel management and employer-employee relations between the State of California and its employees by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with the state [CAL. GOV'T CODE §3525].

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**See Generally:**

- 1) Comment, *Collective Bargaining and the California Public Teacher*, 21 STAN. L. REV. 340 (1969).
- 2) Hight, *Teachers, Bargaining, and Strikes: Perspective from the Swedish Experience*, 15 U.C.L.A. L. REV. 840 (1968).

**Employment Practices; unemployment insurance benefits—maternity**

Unemployment Insurance Code §1264.2 (new).  
AB 675 (Brathwaite); STATS 1972, Ch 1345

Chapter 1345 adds §1264.2 to the Unemployment Insurance Code to provide that a woman who has requested a maternity leave of absence on the advice of her physician, who is denied such leave, who then has voluntarily left her most recent employment because of pregnancy (and is, therefore, ineligible to receive unemployment compensation benefits because of such leaving) shall become eligible to receive such benefits *after* the birth of her child, or other termination of her pregnancy, if she is in all other respects eligible [See CAL. UNEMP. INS. CODE §1251 *et seq.*]. Prior to the addition of §1264.2, no special provision existed concerning compensation related to maternity leaves after denial of a request for such leave by an employer.

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**See Generally:**

- 1) CAL. UNEMP. INS. CODE §1256.
- 2) *Douglas Aircraft Co. v. California Unemployment Ins. Appeals Bd.*, 180 Cal. App. 2d 636, 4 Cal. Rptr. 723 (1960).

**Employment Practices; unemployment appeals**

Unemployment Insurance Code §410 (amended).  
AB 862 (Waxman); STATS 1972, Ch 1385

Section 410 of the Unemployment Insurance Code provides that a decision of the Unemployment Insurance Appeals Board is final except for such action as may be taken by a judicial tribunal as permitted or required by law. Several amendments have been made to this section with regard to the appeal procedure.

Section 410 now provides, with specified exceptions, that the Director of Human Resources Development or any other party to the action, in order to seek judicial review of an appeals board decision, must do so within six months of the date of the decision. Formerly, the Director had one year to seek judicial review, and there was no restriction in the section as to other parties. Specifically excepted are four areas covered by other code sections: an employer's appeal [CAL. UNEMP. INS. CODE §1035]; an employing unit's appeal on application for transfer of a reserve account [CAL. UNEMP. INS. CODE §1055]; an action to recover erroneous or illegally collected contributions [CAL. UNEMP. INS. CODE §1182]; and appeal rights guaranteed by federal law [CAL. UNEMP. INS. CODE §5308].

Section 410 has been further amended to provide that the Unemployment Insurance Appeals Board must attach an explanation of the party's right to seek such review to all of its decisions from which a request for review may be taken.

### **Employment Practices; domestic service workers**

Labor Code §1413 (amended).

AB 2082 (Brathwaite); STATS 1972, Ch 1128

Chapter 1128 amends Section 1413 of the Labor Code to include domestic service workers within the definition of employees as used in the Fair Employment Practices Act [CAL. LABOR CODE §1410 *et seq.*]. Previously, domestic workers who contracted directly with their employers were expressly excluded from the coverage of the Act.

The rationale behind the exclusion of domestic service workers from the coverage of the Fair Employment Practices Act was apparently that special personal or social relationships often exist between such employers and employees. [Tobriner, *California's Fair Employment Practices Act*, 16 HAST. L.J. 333, 342 (1965)].

By including domestic workers within the definition of employees covered by the Act, such workers may, if subjected to unlawful employment practices, file a complaint with the Fair Employment Practices Commission pursuant to §1422 of the Labor Code.

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**See Generally:**

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §157 (7th ed. 1960), (Supp. 1969).
- 2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1965 CODE LEGISLATION 167.
- 3) Tobriner, *California's Fair Employment Practices Act*, 16 HAST. L.J. 333, 342 (1965).

## **Employment Practices; employment records**

Labor Code §1178.5 (new).

AB 946 (McCarthy); STATS 1972, Ch 820

Chapter 820 adds §1178.5 to the Labor Code to provide that the Industrial Welfare Commission is *not* authorized to adopt orders requiring employers to maintain records or information concerning hours of work, meal periods, rest periods or other similar matters for women employees, unless the employers also maintain such records or information concerning such matters for male employees.

Labor Code §1174 provides the basic authority for the Industrial Welfare Commission to require employers to keep records and information of the type discussed above.

It may be noted that Chapter 820 is consistent with the Federal Fair Labor Standards Act which currently requires that records be kept by employers without distinctions based on sex regarding hours worked and wages paid [29 U.S.C. §211 (1970)].

## **Employment Practices; employment of minors**

Education Code §12791 (amended).

SB 1499 (Short); STATS 1972, Ch 1201

Chapter 1201 amends §12791 of the Education Code to add the Division of Labor Law Enforcement to the list of designated authorities who shall bring an action against any person, corporation, firm or agent thereof who violates the provisions of Chapter 7.5 of the Education Code [CAL. EDUC. CODE §12765 *et seq.*, *as added*, CAL. STATS. 1971, c. 1388, §7] regarding the employment of minors.

Previously, such power and responsibility was vested solely in the clerk or secretary of the governing board of the school district where the minor resides, a supervisor of attendance, or other person authorized by the board.

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### **See Generally:**

- 1) CAL. LABOR CODE §79 *et seq.*

## **Employment Practices; direct deposit of wages**

Labor Code §§213, 4651 (amended).

SB 1280 (Short); STATS 1972, Ch 223

Labor Code §212 prohibits the payment of wages due or to become due, or advances on wages to be earned, to an employee by any order,



check, draft, note, memorandum, or other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state. Prior to amendment, §213 provided that nothing in §212 shall:

(a) prohibit an employer from guaranteeing the payment of bills incurred by an employee for the necessities of life or for the tools and implements used by the employee in the performance of his duties;

(b) apply to counties, municipal corporations, quasi-municipal corporations or school districts;

(c) apply to students of nonprofit schools, colleges, universities, and other nonprofit educational institutions.

Chapter 223 amends §213 by adding subdivision (d) to allow employers to deposit wages due or to become due or an advance on wages to be earned in a bank account of the employee's choice in this state, provided the employee has voluntarily authorized such deposit. It is further provided that if an employer discharges an employee or the employee quits, such voluntary authorization for deposits shall be deemed terminated and the provisions of Article 1 (commencing with §200) relating to payment of wages upon termination of employment shall apply.

Labor Code §4651 provides that no permanent or temporary disability payments shall be made by any written instrument unless it is immediately negotiable and payable in cash, on demand, without discount at some established place of business in the state. Chapter 223 adds to §4651 a provision that nothing in the section shall prohibit an employer from depositing such payment in a bank account of the employee's choice in this state, providing the employee has voluntarily authorized such deposits.

#### *COMMENT*

When a federal employer is directed by a voluntary assignment or order of his employee to pay a sum for the benefit of the employee to a creditor, donee or other third party, such payment will be considered equivalent to payment to the employee [29 C.F.R. §531.40 (1971)]. Thus, employees of the federal government have had the option of having their salaries deposited directly into their personal bank accounts. Chapter 223 extends this privilege to employees in California [CAL. STATS. 1972, c. 223, §3].

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**See Generally:**

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency and Employment* §15 (7th ed. 1960), (Supp. 1969).

- 2) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Workmen's Compensation* §1 *et seq.* (7th ed. 1960), (Supp. 1969).

### **Employment Practices; labor camps**

Labor Code §2640 (amended).

AB 1118 (Badham); STATS 1972, Ch 737

Support: Department of Housing and Community Development

Labor Code §2640 provides that the Commission of Housing and Community Development may promulgate statewide rules and regulations pursuant to the provisions of the Employee Housing Act [CAL. LABOR CODE §§2610-2645] relating to labor camps.

Prior to Chapter 737, §2640 provided that any city, county, or city and county *may*, upon written notice to the Department of Housing and Community Development, assume the responsibility for the enforcement of this act and establish a schedule of fees for the construction and operation of labor camps not to exceed those established by the commission.

Chapter 737 amends this section to provide that the Department shall have discretion as to whether or not the local entity shall be allowed to assume this responsibility. Chapter 737 also directs the Department to adopt regulations setting forth the conditions for assumption which may include qualification criteria for local enforcement agencies. When assumption is approved, the Department is to transfer the responsibility for enforcement together with all records of labor camps within the local entity's jurisdiction. It is also provided in Chapter 737 that any local entity may cancel the assumption of responsibility by written notice to the Department, which is then required to re-assume the responsibility within 30 days.

Previously, responsibility on the part of the local entity for enforcing this act could only be terminated if the Department found that the local entity was failing to meet its responsibilities.

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**See Generally:**

- 1) 49 OPS. ATT'Y GEN. 121, 122 (1967).

### **Employment Practices; discrimination based on age**

Labor Code §1420.1 (new); Unemployment Insurance Code §2072 (repealed).

AB 1206 (McCarthy); STATS 1972, Ch 1144

Chapter 1144 has been enacted to make it an unlawful employment practice to discriminate in employment on the basis of age with respect

to any individual between the ages of 40 and 64. Enforcement of this provision is the responsibility of the State Fair Employment Practice Commission [CAL. LABOR CODE §1410 *et seq.*]. Age limitations of apprenticeship programs in which the state participates are not deemed to violate this provision [§1420.1(c)]. Prior to the enactment of Chapter 1144, such discrimination was unlawful (§2072) and enforcement was the responsibility of the Department of Human Resources Development.

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**See Generally:**

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §157 *et seq.* (7th ed. 1960), (Supp. 1969).

**Employment Practices; pesticides and worker safety**

Agricultural Code §§12980, 12981, 12982 (new).

AB 246 (Wood); STATS 1972, Ch 794

Article 10.5 (commencing with §12980) has been added to Chapter 2, Division 7 of the Agricultural Code to declare a legislative intent to provide for the safe use of pesticides and safe working conditions for farmworkers, pest control applicators, and other persons handling, storing, applying pesticides, or working in and about pesticide-treated areas. Section 12980 provides that the development of regulations relating to pesticides and worker safety is the joint and mutual responsibility of the Department of Agriculture and the Department of Public Health (referred to as the Department of Health after the operative date of the Governor's Reorganization Plan No. 1 of 1970), in consultation with the University of California, the Department of Industrial Relations and other similar institutions or agencies.

Section 12981 requires that regulations be adopted by the Director of Agriculture as soon as practicable but not later than the first calendar day of the Legislature's 1974 Regular Session. These regulations shall include, but are not limited to, the following areas:

- (a) Time limits for worker entry into areas treated with pesticides as determined by the director to be hazardous to worker safety.
- (b) Handling of pesticides.
- (c) Handwashing facilities.
- (d) Farm storage and commercial warehousing of pesticides.
- (e) Protective devices, including but not limited to, respirators and eyeglasses.
- (f) Posting, in English and Spanish, of fields, areas, adjacent areas or fields, or storage areas.

The State Department of Public Health (Department of Health, *supra*) shall participate in the development of regulations. Those regulations relating to health effects shall be based on the recommendations of the Department of Public Health. The original written recommendations of the State Department of Public Health, any subsequent revisions of those recommendations, and the supporting evidence and data upon which the recommendations are based shall be made available upon request to any person.

Section 12982 provides for the enforcement of this article and the regulations adopted pursuant to the authority granted therein. The director and the commissioner of agriculture of each county under the director's supervision are charged with enforcement. However, the local health officer may *assist* the director and commissioner. The local health officer is charged with the investigation of health hazards from pesticide use and the abatement of health hazards in cooperation with the commissioner. In addition, the local health officer may call upon the Department of Public Health, pursuant to Health and Safety Code Section 2951, if he finds that pesticide poisoning is serious and that an outbreak in pesticide poisoning or any disease or condition caused by pesticide poisoning has occurred in his county. The director then must provide staff and technical assistance to conduct an epidemiological investigation of the outbreak, and where appropriate, make recommendations to control or prevent such outbreaks [CAL. HEALTH AND SAFETY CODE §2951].

### **COMMENT**

Article 10.5 is a much needed response to an increasingly significant health problem. As time honored chlorinated hydrocarbon pesticides, such as DDT, fall into disfavor, they are replaced by organophosphate pesticides, such as parathion, which are more easily and quickly assimilated biologically, but which may be more immediately harmful to those coming into contact with them because of higher toxicity levels [Office of Planning and Research, Governor's Office, *State of California Environmental Goals and Policy*, 22 (March 1, 1972)]. However, §12982 has been criticized for vesting enforcement of the article and regulations adopted pursuant to it in the Department of Agriculture, which, according to Assemblyman Burton, "is going to be more concerned about the economic impact than the health impact" of pesticide rules [The Sacramento Bee, April 28, 1972, at A4]. While to some extent Chapter 794 makes pesticide safety regulations the mutual province of both agencies, it is still true that local health officers may only "assist" in

enforcement of the rules and regulations adopted pursuant to it, and must enlist the cooperation of the Commissioner of Agriculture to abate health hazards from pesticide use, unless the hazard amounts to an outbreak [See CAL. HEALTH AND SAFETY CODE §2951].

### **Employment Practices; wages, hours and working conditions**

Labor Code §§1171, 1173, 1174, 1178, 1182, 1183, 1185, 1191, 1193, 1193.5, 1193.6, 1194, 1194.5, 1195, 1195.5, 1197, 1199 (amended).

AB 256 (Warren); STATS 1972, Ch 1122

Chapter 1122 has been enacted to extend the duty and power of the Industrial Welfare Commission to investigate and set *minimum wages* for adult males as well as for women and minors, as was previously provided.

The authority of the Commission to investigate and make orders relating to *maximum hours* and *standard conditions of labor* in a particular occupation, trade or industry consistent with the health and welfare of women and minors has *not* been extended to include adult males [CAL. LABOR CODE §§1173, 1178, 1182, 1185, 1193.5, 1199]. In that regard, it is interesting to note that a bill which would have extended such protection to adult males was passed by the Legislature this year; however, the bill was vetoed by the Governor on December 29, 1972 [A.B. 1710, 1972 Regular Session].

Section 1194, as amended, allows any employee, including adult males, receiving less than the legal minimum wage to bring a civil action for any unpaid balance up to the minimum wage. Only women and minors may bring civil actions to recover the unpaid balance resulting from a payment of less than the legal *overtime* compensation. This is apparently because overtime compensation relates more to hours and working conditions which the Commission has no power to regulate with respect to adult males.

Section 1171 has also been amended to specifically provide that this chapter shall not apply to individuals employed as outside salesmen.

It should be further noted that all employers in California are now required by §1174 to keep a record of the names and addresses of *all employees* and to keep payroll records showing the daily hours and wages of employees at the particular plant or establishment where they are employed.

COMMENT

Since Chapter 1122 operates to recognize that a state *minimum wage* is needed for adult males as well as for women and minor employees, there seems to be little reason for not recognizing that *long hours and poor working conditions* may be injurious to the health and welfare of adult males as well as to women and minor employees. However, as noted above, Chapter 1122 does not extend the authority of the Industrial Welfare Commission to investigate hour structure and working conditions where adult males are involved. Perhaps some protection in such cases has become available with the enactment of Chapter 720 [CAL. STATS. 1972, c. 720; see this volume at 471], which amends §6505 of the Labor Code to require the Division of Industrial Safety to summarily investigate *any employee* complaint relating to employment conditions which are allegedly unsafe or injurious to the welfare of the employee.

The apparent reason for specifically providing that this chapter does not apply to individuals employed as outside salesmen is that such employees normally control their own hours and are paid on a commission basis.

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See Generally:

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency and Employment* §15 (7th ed. 1960), (Supp. 1969).
- 2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1965 CODE LEGISLATION 169.