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Employment Practices

University of the Pacific; McGeorge School of Law

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Employment Practices

Employment Practices; employer contributions to employee benefit plans

Labor Code §227 (amended).

AB 3328 (McCarthy); STATS 1974, Ch 1033

Support: Bay Area Typographical Union

Labor Code Section 227 provides that it shall be unlawful for an employer willfully or with fraudulent intent to fail to make payments to a health or welfare fund or other employee benefit plan when the employer has previously agreed to make such a contribution. The agreement may be embodied in a contract arrived at by the employer and the employee personally, or in a contract reached by means of collective bargaining between employer and employees, or in a contract negotiated on an industry wide basis. As amended, a willful failure to pay an amount exceeding \$500 may be treated as a misdemeanor or a felony. The penalty, which is apparently discretionary with the court, may include a fine of no more than \$1,000 and/or imprisonment of no more than five years in the state prison or no more than one year in the county jail. A willful failure to pay an amount less than \$500 is punishable as a misdemeanor. Previously, all violations were treated as misdemeanors.

Employment Practices; unemployment insurance

Unemployment Insurance Code §1253.5 (new); §1252 (amended).

SB 166 (Holmdahl); STATS 1974, Ch 1185

Support: California Teamsters Legislative Council

Opposition: California Employment Development Department

Prior to the enactment of chapter 1185, eligibility for unemployment insurance benefits for a given week was predicated on a party's availability for work each and every day of that week. Failure of a party to hold himself in readiness to work during a single day resulted in ineligibility for any benefits derived from that week. Even where a party was physically unable to work for a day, it was argued, he was effectively removed from the labor market and not entitled to benefits

for the week [CAL. UNEMP. INS. CODE §1253; 24 OPS. ATT'Y GEN. 81 (1954)]. Chapter 1185 provides that if a party is unable to work because of mental or physical infirmity for one or more days during a week, he still may receive unemployment insurance benefits for that week in the amount of one-seventh of the weekly benefit for each day he was available, provided he was eligible in all other respects to receive such benefits.

**Employment Practices; unemployment insurance—
public entities**

Unemployment Insurance Code §710 (amended).

AB 3672 (Deddeh); STATS 1974, Ch 1094

Support: California Federation of Labor, AFL-CIO

Section 710 of the Unemployment Insurance Code permits a government entity to elect to become an "employer" for purposes of unemployment insurance and disability insurance coverage for all of its employees for a term of at least two years. As amended by chapter 1094, section 710 allows the entity to provide coverage either for all employees, or solely for those employees who are exempt from civil service or merit status and who perform work similar to that of the building trades crafts. Section 710 provides the procedure to implement such coverage.

COMMENT

Formerly, a government entity which contemplated becoming an "employer" for the purposes of state unemployment and disability insurance coverage was required to extend coverage either to all of its employees or to none of them. Section 710 formerly provided that a majority of all employees, civil and noncivil service, might petition the government entity for such coverage. Upon receipt of the petition, the government entity was entitled, but not required, to apply to the State Director of Benefit Payments for classification as an "employer." Upon submission of the request, determination by the Director that a majority of the employees to be affected had signed the petition, and written approval by the Director, the government entity acquired "employer" status with respect to disability and unemployment benefits.

The Act aims at curing several statutory and practical considerations which operated to bar access by noncivil service employees to such unemployment and disability insurance. Often, civil servants are adequately covered under privately negotiated plans and thus possess no

incentive to enter into a state plan which would impose an additional deduction from their paychecks. Thus, noncivil service employees, numbering in the minority, frequently were unable to raise the requisite majority of signatures on a petition. Lacking a petition signed by a majority of all employees, the government entity could not apply to the state for coverage.

Chapter 1094 solves part of this problem by allowing the government entity to extend state coverage to the limited class of noncivil servants performing work similar to that of building trades crafts. The Act is unclear, however, as to what group of employees must sign the petition requesting the government entity to apply to the state for coverage. On its face, the bill appears to retain the requirement that a majority of *all* employees subscribe to a petition submitted to the government entity, even in those cases where the petition requests coverage only for the building trades employees. The "overkill" of such a requirement is apparent, however, and a common sense interpretation derived from the Act's purpose would indicate that a petition signed only by the building trades employees would likely be sufficient for the purpose.

Two other items are worth noting. First, application by the government entity to the state is discretionary. Even upon receipt of a petition properly signed, the entity is not required to request "employer" status. Second, classification as an "employer" by the state is contingent upon a determination by the Director of Benefit Payment that the petition has been signed by a majority of workers affected *and* upon the Director's written approval. The Act does not deal with the question of whether the Director may, upon receipt of a proper petition, arbitrarily refuse approval. The extent to which local governments will avail themselves of the provisions of chapter 1094 is uncertain, although the City of Los Angeles has indicated it employs a number of noncivil service building trades workers eligible for such coverage.

See Generally:

- 1) 35 OPS. ATT'Y GEN. 10 (1960) (reimbursement of unemployment fund by the government entity).

Employment Practices; employee housing

Labor Code Article 3 (commencing with §2630) (repealed); Article 3 (commencing with §2630) (new); §2640 (amended).

AB 221 (Ralph); STATS 1974, Ch 1344

Labor Code Article 3 (commencing with §2630) previously required every labor camp to be *registered* annually with the Department of

Housing and Community Development, and outlined the procedure for such registration. Section 2616 defines a labor camp as any dwelling, whether building, tent, or mobile home, maintained in connection with any work or place where work is performed. Generally, the camp is made available to itinerant employees, *gratis* or for a fee, to facilitate employment. Logging camps, for example, are labor camps. As amended, article 3 provides that each owner or operator of a labor camp must obtain annually a *permit* authorizing continued operation. The permits may stipulate the manner in which the labor camp is to be used or operated, and may be suspended upon violation of chapter 4 of the Employee Housing Act [CAL. LABOR CODE §§2610-2646]. Permits are to be issued by the Department of Housing and Community Development, or by cities and counties which have applied to the Department to assume responsibility for camps in their areas. Section 2640, as amended, mandates that the Department conduct an annual review of the enforcement of regulations by all local governments which have undertaken that responsibility.

COMMENT

The shift from a registration system to a permit system is designed to enhance enforcement of regulations governing operation of labor camps. While the Commission of Housing and Community Development and local agencies which have assumed the Commission's role in their areas have for some time possessed the authority to adopt rules and regulations governing the operation of labor camps, enforcement required an action in the superior court charging the offending camp with creating a public nuisance [CAL. LABOR CODE §§2635, 2636, 2645]. No provision was made for revocation of registration administratively upon discovery of a violation. Chapter 1344 provides for the suspension of a permit when the operation of the camp is found to be in violation of rules adopted either by the Commission or by a local agency which has assumed the Commission's role. This added authority will strengthen the Commission and local agencies in supervising the operation of labor camps.

A second change, also designed to promote enforcement, is the provision mandating the Department of Housing and Community Development to conduct an annual review of enforcement efforts of all local agencies which have undertaken that role. Where the Department determines that a local agency is not effectively enforcing statutes and regulations regarding labor camps, it may issue notice to that agency.

If the agency fails to initiate corrective action within 30 days of receipt of notice, the Department must assume the role of enforcing body in that locality.

See Generally:

- 1) 1 WITKIN, *SUMMARY OF CALIFORNIA LAW, Agency and Employment* §57 (8th ed. 1973) (Employee Housing Act).

Employment Practices; arrest records

Labor Code §432.7 (new).

AB 2644 (Greene); STATS 1974, Ch 328

Support: California Rural Legal Assistance

Opposition: California Employment Agency

Chapter 328 adds section 432.7 to the Labor Code and bars an employer, public or private, from requiring a job applicant to furnish a list of arrests on an initial employment form. Violation is a misdemeanor and carries a fine not to exceed \$500. However, there is no express provision for either a private cause of action by an aggrieved job applicant or civil liability based on the conduct of an employer. An applicant's only express remedy is to lodge a criminal complaint with the district attorney. Further, chapter 328 is strictly aimed at the conduct of an employer in requesting the information from a prospective employee and does not impose civil or criminal liability on a third party furnishing such data to the employer. The statute does not prohibit inquiries concerning *convictions*, nor does it prohibit questions regarding arrest information at a time subsequent to the receipt of the initial application. Further, by express provision, the bill does not protect persons seeking employment as peace officers and does not prevent a public agency, authorized by law, from requesting arrest records from the Division of Law Enforcement.

COMMENT

This chapter is intended to protect persons who have been arrested but against whom no conviction has been obtained. It finds its rationale in the consideration that innocence is presumed until the moment of conviction and that the mere fact of arrest does not imply either conviction or unfitness for employment. Nothing in the act prohibits an employer, however, from requesting arrest data on a supplementary questionnaire submitted by the prospective employee subsequent to the initial application but prior to hiring. Nor are oral inquiries concerning arrests prohibited. The practical effect of chapter 328 is to render

it slightly more difficult, but by no means impossible, for an employer to obtain arrest data prior to making a determination to hire an applicant.