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Employment Practices

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Employment Practices

Employment Practices; comparable worth

Government Code §§53247, 53248 (new).

AB 1580 (Klehs); 1983 STAT. Ch 906

Support: American Federation of State, County and Municipal Employees; California Nurses Association; Department of Personnel Administration

Since 1981, the policy of the State of California¹ has been to base salaries² on the comparability of the value of work performed (hereinafter referred to as comparable worth).³ Because of the need to reassess previous standards for establishing salaries that perpetuated pay inequities based upon sex,⁴ the Department of Personnel is permitted to review the salaries of all state civil service employees and consider the comparable worth in readjusting those salaries.⁵

Chapter 906 promotes comparing the value of work performed when setting salaries.⁶ Under Chapter 906, local agencies⁷ may not adopt a policy prohibiting the consideration of comparable worth as a factor in the negotiation of salaries.⁸ In addition, when measuring comparable worth, the composite skill,⁹ effort,¹⁰ responsibility,¹¹ and working conditions¹²

1. See CAL. GOV'T CODE §19827.2.

2. *Id.* §19842.2(c)(1) (definition of salary).

3. *Id.* §19827.2(a); see *id.* §§19827.2(c)(2), 53248(b)(1) (definition of comparability of the value of work); see also *Review of Selected 1981 California Legislation*, 13 PAC. L.J. 759 (1982) (analysis of legislation authorizing comparable worth as a consideration in setting salaries).

4. CAL. GOV'T CODE §19827.2(a).

5. See *id.* §19827.2 (b); see also *Review of Selected 1981 California Legislation*, 13 PAC. L.J. 759 (1982) (analysis of legislation authorizing comparable worth as a consideration in setting salaries).

6. See CAL. GOV'T CODE §53248(a). Compare *id.* §19827.2 with *id.* §§53247, 53248.

7. Local agency means any county, city, city and county, including any charter county, city or city and county, and any district, school district, municipal or public corporation, political subdivision or public agency of the state, or any instrumentality of one or more of these agencies. *Id.* §53247.

8. *Id.* §53248(a).

9. *Id.* §53247(b)(2). Skill includes any type of intellectual or physical skill acquired by the employee through experience, training, education, or natural ability. *Id.*

10. *Id.* §53247(b)(3). Effort means the effort required to perform the work, including any intellectual or physical effort. *Id.*

11. *Id.* §53247(b)(4). The responsibility required to perform work includes the extent to which the employer relies on the employee, the importance of the duties, and the accountability of the employee for the work of others. *Id.*

12. *Id.* §53247(b)(5). Conditions under which work is performed, including physical or psychological factors comprise working conditions. *Id.*

normally required in the performance of the work must be weighed.¹³ Finally, no local agency may continue an ordinance or policy that prohibits the consideration of comparable worth as a factor in setting salaries.¹⁴

13. *Id.* §53247(b)(1).

14. *Id.* §53247(a).

Employment Practices; employee personnel files

Labor Code §1198.5 (amended).
AB 960 (Davis); 1983 STAT. Ch 1220

Existing law provides that upon request, employers¹ must permit employees to inspect personnel files used to determine the employee's qualifications for employment, promotion, additional compensation, termination, or other disciplinary actions.² The employer is required to have available a copy of each employee's personnel file at the workplace, or to produce the file within a reasonable period of time after the request for inspection is made.³

With the enactment of Chapter 1220, local public agency employers also must permit the inspection of a personnel file upon the request of an employee.⁴ The employer must allow inspection of the original personnel file at the location where the files are stored, with no loss of compensation to the employee.⁵ If a local agency has established an independent employee relations board or commission, Chapter 1220 grants this board or commission jurisdiction over all matters and disputes concerning the inspection of employee personnel files.⁶ An employee may pursue any available judicial remedy, however, whether or not relief has first been sought from a board or commission.⁷

The provisions of Chapter 1220 do not apply to the state, any state agency, or public school district employees covered by specified provi-

1. The provisions of California Labor Code Section 1198.5 apply to private employers and their employees. *See Review of Selected 1975 California Legislation*, 7 PAC. L.J. 462, 463 (1976).

2. CAL. LAB. CODE §1198.5(a). This section does not apply to (1) the records of an employee relating to the investigation of a possible criminal offense or (2) letters of reference. *Id.* §1198.5(c).

3. *Id.* §1198.5(b).

4. *Id.* §1198.5(e). This section applies to public employers, including, but not limited to, every city, county, city and county, district, and every public and quasi-public agency. *Id.*

5. Compare *id.* §1198.5(b) with 1977 Cal. Stat. c. 938, §1, at 2865 (amending CAL. LAB. CODE §1198.5).

6. CAL. LAB. CODE §1198.5(d).

7. *Id.*

sions.⁸ In addition, no restriction is placed upon the statutory right of county or public school district employees to inspect and respond to information contained in their personnel files.⁹ Finally, Chapter 1220 does not grant a public safety employee the right of access to confidential pre-employment information.¹⁰

8. *Id.* §1198.5(e); *see* CAL. EDUC. CODE §44031 (public school district employees have the right to review certain materials contained in their personnel files).

9. CAL. LAB. CODE §1198.5(e). Nothing in this section is to be construed to limit the rights of employees pursuant to existing law. *Id.* *See* CAL. EDUC. CODE §87031 (employees have the right to enter their own comments and to have these comments attached to any derogatory statement); CAL. GOV'T. CODE §31011 (employees have the right to respond in writing or in an interview to information that will become part of the personnel file and with which they personally disagree).

10. CAL. LAB. CODE §1198.5(e).

Employment Practices; mandatory retirement

Education Code §§44906, 87466, 89509 (repealed); §§45134, 88033 (amended); Government Code §§7508, 20981, 20981.2, 20983.1, 20983.2, 20983.6, 20984, 20985, 20988, 31671, 31671.03, 31671.1, 45346 (repealed); §§12942, 20983.5, 31671.05 (amended); Military and Veterans Code §167 (amended).

AB 398 (Chacon); 1983 STAT. Ch 666

Support: Department of Aging; Department of Finance;

Department of Personnel Administration; Public Employees Retirement System; State Personnel Board

Mandatory or compulsory retirement has been authorized by statute¹ and upheld in the courts.² Prior law allowed the compulsory retirement of employees at a specified age.³ In 1977, however, the California Legislature declared mandatory retirement and the corresponding use of chronological age as an indicator of a person's ability to perform on the job to be obsolete and cruel practices.⁴ Thereafter, various exceptions were created to

1. *See* 1979 Cal. Stat. c. 471, §§2, 3, at 1628 (amending CAL. EDUC. CODE §§44906, 87466); 1979 Cal. Stat. c. 1110, §28, at 4035 (amending CAL. GOV'T CODE §20981); 1979 Cal. Stat. c. 56, §2, at 137 (amending CAL. GOV'T CODE §20984); 1947 Cal. Stat. c. 596, §9, at 1758 (enacting CAL. GOV'T CODE §13167.1).

2. *See* *Miller v. California*, 18 Cal. 3d 808, 813, 557 P.2d 970, 973, 135 Cal. Rptr. 386, 390 (1977); *American Federation of Teachers College Guild, Local 1521 v. Board of Trustees of Los Angeles Community College District*, 63 Cal. App. 3d 800, 803, 134 Cal. Rptr. 111, 113 (1976); *see also* *Commet, The Constitutionality of the Mandatory Retirement Age*, 5 SAN FERN. V. L. REV. 303, 303.

3. *See* 1979 Cal. Stat. c. 1110, §28, at 4035 (amending CAL. GOV'T CODE §20981) (age 70); 1979 Cal. Stat. c. 471, §§2, 3, at 1628 (amending CAL. EDUC. CODE §§44906, 87466) (age 70); 1949 Cal. Stat. c. 466, §3, at 812 (amending CAL. MIL. & VET. CODE §167) (age 64).

4. 1977 Cal. Stat. c. 852, §1, at 2554 (legislative declaration).

mandatory retirement provisions extending the possible time of employment.⁵ Nevertheless, these exceptions left open the possibility that employers could continue to force employees into early retirement.⁶ Chapter 666 reaffirms the policy of the legislature on mandatory retirement and reflects an intent to conform the law to this legislative policy.⁷

Prior law authorized compulsory retirement for employees of school districts and community colleges.⁸ Although employees, who were compelled to retire, lost their employment classification,⁹ they could continue to work on a year-to-year basis.¹⁰ In addition, upon reaching age seventy, a college trustee or a person employed by a state university was required to retire or terminate employment on the first day of the following calendar month.¹¹ Chapter 666 repeals these mandatory retirement provisions¹² while retaining existing language prohibiting the establishment of a maximum age limit for the continuation of employment.¹³ The mandatory retirement of tenured faculty in institutions of higher education, however, remains in effect.¹⁴

Furthermore, under prior law, officers, warrant officers,¹⁵ and enlisted persons who were on active duty with the Office of the Adjutant General¹⁶ were required to retire at age sixty-four.¹⁷ Chapter 666 terminates this practice of mandatory retirement within the Office of the Adjutant General.¹⁸

Chapter 666, however, retains mandatory retirement provisions for employees, over the age of seventy, who are physicians employed by a profes-

5. Employees over age 70, if found to be mentally and physically sound, could continue in employment. 1979 Cal. Stat. c. 1027, §16, at 3795 (amending CAL. EDUC. CODE §89509). Employees over age 70 who were certified as competent by the employer, department head, or appropriate supervisor may have been allowed to continue employment. 1977 Cal. Stat. c. 852, §5, at 2556 (enacting CAL. GOV'T CODE §31671.03); *see also* 1978 Cal. Stat. c. 810, §7, at 2596 (enacting CAL. GOV'T CODE §20985); 1959 Cal. Stat. c. 1037, §1, at 3058 (enacting CAL. GOV'T CODE §20988); 1977 Cal. Stat. c. 852, §6, at 2556 (enacting CAL. GOV'T CODE §45346).

6. *Review of Selected 1978 California Legislation*, 9 PAC. L.J. 519, 520 (1979); *Tiffany v. Pacific Sewer Pipe Co.*, 180 Cal. 700, 700-01, 182 P. 428, 428-30 (1919).

7. 1983 Cal. Stat. c. 666, §1, at ___.

8. CAL. EDUC. CODE §§44906, 87466. Pertained to school districts not located wholly or partly within the boundaries of a city. *Id.* §§44906, 87466.

9. 1979 Cal. Stat. c. 471, §§2, 3, at 1628 (amending CAL. EDUC. CODE §§44906, 87466); CAL. EDUC. CODE §45101 (definition of classification).

10. 1979 Cal. Stat. c. 471, §§2, 3, at 1628 (amending CAL. EDUC. CODE §§44906, 87466).

11. 1979 Cal. Stat. c. 1072, §16, at 3795 (amending CAL. EDUC. CODE §89509).

12. 1983 Cal. Stat. c. 666, §2, at ___ (repealing CAL. EDUC. CODE §44906); *Id.* c. 666, §4, at ___ (repealing CAL. EDUC. CODE §87466).

13. CAL. EDUC. CODE §§45134, 88033.

14. *Compare* CAL. GOV'T CODE §12942(a) with 1981 Cal. Stat. c. 146, §1, at 944-45 (amending CAL. GOV'T CODE §12942(a)).

15. CAL. MIL. & VET. CODE §225 (definition of warrant officer).

16. *Id.* §160 (definition of Adjutant General).

17. 1949 Cal. Stat. c. 466, §3, at 812 (amending CAL. MIL. & VET. CODE §167).

18. CAL. MIL. & VET. CODE §167.

sional medical corporation.¹⁹ The authorization for mandatory retirement also is retained for employees age sixty-five or over who, for the two years immediately preceding, were employed as bona fide executives or in high level policy making positions, if those employees are entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination thereof.²⁰ Furthermore, since the intent of the legislature is to give employees the right to retire without being compelled to do so,²¹ Chapter 666 retains the statutory provisions *allowing* an employee to retire at a specified age, if retirement at that time is desired.²²

19. CAL. GOV'T CODE §12942(b).

20. *Id.* §12942(c). The aggregate amount of benefits must equal at least \$27,000. *Id.* §12942(c).

21. See 1980 Cal. Stat. c. 248, §2, at 499-500.

22. CAL. GOV'T CODE §31671.05.

Employment Practices; disqualification from unemployment compensation benefits

Unemployment Insurance Code §1256.5 (new)
SB 213 (Johnson); 1983 STAT. Ch 1065

Existing law provides that a person discharged from a job for misconduct is disqualified from receiving unemployment compensation benefits.¹ Case law has applied a volitional test² to conclude that an irresistible compulsion to use or consume intoxicants resulting in the termination of employment is not misconduct warranting disqualification from unemployment benefits.³ Chapter 1065 abrogates this case law by explicitly providing that persons may not receive unemployment benefits if they are terminated from their most recent employment because of a compulsion that results in chronic absenteeism, intoxication on the job, or gross neglect of duty due to intoxication.⁴

Furthermore, Chapter 1065 states that eligibility for unemployment benefits may not resume for a person terminated due to a compulsion to consume intoxicants until (l) the person has performed service in bona

1. CAL. UNEMP. INS. CODE §1256.5.

2. *Drysdale v. Department of Human Resources Development*, 77 Cal. App. 3d 345, 352, 142 Cal. Rptr. 495, 499 (1978) (explanation of the volitional test); see also CAL. UNEMP. INS. CODE §100.

3. *Jacobs v. California Unemployment Insurance Appeals Board*, 25 Cal. App. 3d 1035, 1039, 102 Cal. Rptr. 364, 367 (1972).

4. CAL. UNEMP. INS. CODE §1256.5(a). Once this determination is made, the Employment Development Department must inform the applicant of the decision. *Id.*

vide employment and received wages equal to or exceeding five times the amount of weekly benefits that the person would have received had the disqualification not occurred,⁵ or (2) the person is able to return to work and is certified by a physician or an authorized treatment program administrator to be involved in or to have completed a treatment program for the condition.⁶ Finally, Chapter 1065 directs the Employment Development Department to advise the disqualified applicant about disability benefits, and if requested, refer the individual to an appropriate drug or alcohol treatment program.⁷

5. *Id.*

6. *Id.*; see also *id.* §2626.2 (definition of authorized treatment program).

7. *Id.* §1256.5(b). A person suffering from an irresistible compulsion may qualify for disability benefits. *Id.* §§2625-29.1 (provisions detailing the disability benefits system), §2626 (definition of disability or disabled).

Employment Practices; unemployment insurance for sole stockholders

Unemployment Insurance Code §637.1 (amended).

SB 539 (Robbins); 1983 STAT. Ch 887

Support: California Employment Development Department; Department of Finance

Existing law permits an individual who is the sole stockholder employed as an officer¹ of a private corporation for profit,² to disclaim any right to unemployment benefits for wages received.³ The individual and the corporation are then exempt from making contributions to the state for unemployment benefits.⁴ Prior law required the individual exercising this right to disclaim *both* unemployment compensation benefits and unemployment disability benefits.⁵ Chapter 887 permits these individuals to disclaim rights to *either* unemployment compensation benefits, unemployment disability benefits, *or both*.⁶ These provisions of Chapter 887

1. See CAL. UNEMP. INS. CODE §§621(a) (employee includes any officer of a corporation), 637.1.

2. *Id.* §637.1.

3. *Id.* The employer must still pay federal unemployment taxes. 26 U.S.C. §§3301 (employer taxed on each employee), 3121(d)(1) (any officer of a corporation is an employee), 3306(c) (employment as officer of a corporation not specifically excepted).

4. CAL. UNEMP. INS. CODE §637.1.

5. See *id.* §128 (defining benefits to include unemployment compensation benefits or disability benefits); 1979 Cal. Stat. c. 755, §1, at 2612 (enacting CAL. UNEMP. INS. CODE §637.1). See generally *Review of Selected 1979 California Legislation*, 11 PAC. L.J. 548 (1980).

6. Compare CAL. UNEMP. INS. CODE §637.1 with 1979 Cal. Stat. c. 755, §1, at 2612 (enacting CAL. UNEMP. INS. CODE §637.1).

will remain in effect until January 1, 1989, when the entire section is repealed.⁷

7. CAL. UNEMP. INS. CODE §637.1

