

*Severson & Werson's Labor and Employment Practice Group works closely with employers to develop strategies that help prevent employment claims. The Group also represents employers in defending a wide range of civil litigation and administrative claims.*

*If you have any questions regarding this News Brief or other labor and employment law matters, please contact one of Severson & Werson's Labor and Employment Practice Group Co-Chairs:*

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Now that the dust from the first quarter has settled and tax time is over, it's time to make sure your company has updated its policies and procedures to comply with a host of new federal, state and local employment laws taking effect over the course of 2008. Some of the most important ones are summarized below. For more details, or for assistance in drafting policies and forms, please contact us.

#### **NEW FEDERAL LAWS**

##### **FMLA LEAVE FOR MILITARY FAMILY MEMBERS**

The federal Family and Medical Leave Act ("FMLA") has been amended to allow unpaid leave for certain family members of military personnel on active duty in a combat zone. The new provisions allow eligible employees up to 12 weeks of leave to assist when a military family member experiences a "qualifying exigency," such as a call to active duty in a combat zone, and up to 26 weeks of leave to care for family members injured in the line of duty.

##### **NEW I-9 FORMS**

Employers must now use the new version of Form I-9, the federal Employment Eligibility Verification Form, for new hires and employees requiring re-certification. The new I-9 Form contains a revised list of documents acceptable for proving identity and eligibility to work in the United States. For copies of the new I-9 form, please go to <http://www.uscis.gov/files/form/I-9.pdf>. Note that use of this new form is set to expire on June 30, 2008 and another form will take its place.

#### **NEW CALIFORNIA LAWS**

##### **CALIFORNIA MILITARY SPOUSAL LEAVE**

California employees who work an average of 20 or more hours per week are entitled to take up to 10 days of unpaid leave to spend with a spouse who is a member of the United States Armed Forces, the National Guard, or the Reserves and is on leave from active deployment in a combat zone. To be eligible, qualifying employees must notify their employer within 2 business days of receiving official notice of the leave and must submit written documentation of the leave. Employers are prohibited from retaliating against any employee for requesting or taking military spousal leave.

##### **DRIVERS MUST USE CELL PHONES IN "HANDS-FREE" MODE**

Effective July 1, 2008, drivers in California may only use a cell phone or other electronic device in hands-free mode while driving. Violators face fines, and employers may have expanded liability if an employee driving for any arguably work-related purpose is involved in an accident while using a cell phone or other electronic device in hands-on mode. Employers should review and update their cell-phone policies and their enforcement practices to help minimize potential liability.

## **NEW SAN FRANCISCO ORDINANCE**

### **FIRST PAYMENTS DUE APRIL 30, 2008 UNDER SAN FRANCISCO'S NEW HEALTH CARE SECURITY ORDINANCE**

San Francisco's new Health Care Security Ordinance ("SF HCSO") will require many employers to make additional expenditures for employee health care expenses, particularly for part-time employees who may not otherwise be entitled to health benefits under employer policies. Effective the first quarter of 2008, for-profit employers of 50 or more employees, regardless of geographic location, must make quarterly expenditures toward the health care expenses of any employees (including part-time employees and telecommuters) who work at least 10 hours per week within the geographic boundaries of San Francisco. For-profit employers of 20 or more employees meeting the same criteria must begin complying in the second quarter of 2008. Expenditures must be made within 30 days after the end of each quarter, with first payments for large employers due April 30, 2008.

There are some important exclusions. For example, employers are exempt from contributing for managerial, supervisory or confidential employees who earned more than \$74,558 in total wages or \$35.85 per hour in 2007, for employees who are eligible for Medicare or TriCare/Champus, and for employees who merely pass through – rather than make stops in – San Francisco. In addition, employees who demonstrate proof of coverage through another employer or as a spouse or dependant may sign a special voluntary waiver. However, they are not required to do so, nor may an employer require or coerce them to do so. (For a copy of the SF HCSO Employee Voluntary Waiver Form, please visit [www.sfgov.org/olse](http://www.sfgov.org/olse).)

For all remaining eligible employees, required expenditures must be calculated based on hours worked, up to a maximum of 172 hours per month.

For 2008, employers of 20 to 99 employees must contribute \$1.17 per employee per hour worked, and employers of 100 or more employees must contribute \$1.76 per employee per hour worked.

Because employer expenditures may take the form of contributions to health insurance premiums or qualifying health care spending accounts, many employers will find that the bulk of their employees already receive employer contributions that meet the requisite thresholds. For those employees who do not, employers may pay the difference to a fund run by the City and County of San Francisco or to health care spending accounts created for this purpose. Employers should consult an attorney or qualified benefits broker to determine which option best suits their needs.

Employers must make annual reports to San Francisco's Office of Labor Standards Enforcement ("OLSE") demonstrating their compliance, although the City has waived the reporting requirement for 2008. (For a copy of the SF HCSO Mandatory Reporting Form, please visit [www.sfgov.org/olse](http://www.sfgov.org/olse).) Employers should retain records of paid time and expenditure calculations, as well as waiver forms, for four years and must make them available to the OLSE upon request. Employers who fail to comply with the SF HCSO face financial penalties.

Currently, the ordinance is being challenged in court. However, unless and until the ordinance is found invalid, employers are required to comply.

This News Brief was designed to provide accurate general information with respect to the subject matter covered, current as of the date of publication. Severson & Werson is not rendering legal or other professional services. If you require legal advice or other expert assistance, please seek individualized assistance of counsel for your particular situation.

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