

California's Paycheck Rule for Temporary Workers to Take Effect New Year's Day

By Mark S. Askanas

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A new law slated to take effect on January 1, 2009, clarifies the wage payment obligations of temporary staffing firms that do business in California by requiring employers to pay temporary employees on assignment at least once a week, regardless of when their temporary assignment ends, rather than the day each assignment ends. Under the new law (California Labor Code Section 201.3), employers also must pay the wages for work performed during any calendar week no later than on the regular company payday during the following calendar week.

The new law effectively reverses a California Supreme Court decision stating that under the Labor Code employers must issue a final paycheck to temporary employees who are involuntarily terminated or "discharged" on the employees' last day of work. (The Labor Code generally requires that if an employee is discharged, the wages earned and unpaid at the time of discharge are due and payable immediately.)

In *Smith v. Superior Court (L'Oreal)*, 39 Cal. 4th 77 (2006), the Court had held that a temporary model, who was employed for one-day assignments, was "discharged" within the meaning of the Labor Code at the end of each assignment, even if the worker might receive future assignments from the staffing agency. *L'Oreal* did not explain whether the end of an assignment for a temporary employee who is immediately placed on another assignment or remains available for other assignments constitutes a "discharge" for purposes of the Labor Code. Following *L'Oreal*, several lawsuits were filed against staffing agencies and companies that used temps based on their failure to pay final wages at the end of each assignment. Mark Askanas, a partner in Jackson Lewis' San Francisco office, noted, "The *L'Oreal* decision imposed an onerous burden on employers. The case severely impacted the rationale for having a temporary workforce by equating the end of a temporary assignment with a termination of employment which triggers final pay obligations under the California Labor Code."

The new law makes clear that the end of an assignment for a temporary worker does not qualify as a termination or "discharge," and therefore employers are not required to pay final wages immediately. The new law, however, includes certain protections for temporary workers' benefit: employers must pay them weekly, and no later than the regular payday of the calendar week following the performance of services. If the temporary services employer meets these requirements, it is deemed to have paid wages upon completion of an assignment in a timely fashion.

"The new legislation will go a long way to protect California employers from the continued onslaught of class action litigation," said Mr. Askanas, "Still, employers of temporary workers must adhere to the requirements regarding paying temps on the regular company payday the following calendar week."

The new law contains several exceptions. Among them are:

- If an employee of a temporary services employer is assigned to work for a client on a day-to-day basis, wages must be paid daily, regardless of when the assignment ends, if each of the following occurs:
 - The employee reports to or assembles at the office of the temporary services employer or other location.
 - The employee is dispatched to a client's worksite each day and returns to or reports to the office of the temporary services employer or other location upon completion of the assignment.
 - The employee's work is not executive, administrative, or professional, as

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defined in the wage orders of the Industrial Welfare Commission, and is not clerical.

- If the worker is assigned to a client in a trade or labor dispute, regardless of the length of the assignment, the worker must be paid on a daily basis.
- If an employee is on a long-term assignment (i.e., for more than 90 consecutive days), unless the employee is paid weekly, in accordance with this new law.

California employers may incur substantial penalties for failing to comply with the new procedures. For example, employers who fail to pay final wages according to the new law will continue to expose themselves to liability of up to 30 days of continued wages. Temporary/contract staffing companies should re-examine their payroll practices in light of new Labor Code Section 201.3 by January 1, 2009, to ensure they are in compliance. All employers that use occasional or temporary workers should ensure the agencies they work with comply with the new law as employees regularly bring “joint employer” wage claims against both the temporary staffing agency and the client-company. Jackson Lewis can assist companies with any questions on how the new law may impact their workforce.

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