

AU REVOIR ESTATE TAXES?

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But whether we will see the \$2,000,000 exemption in 2006 or the \$3,500,000 exemption in 2009 remains questionable, and certainly one should not plan the future of one's family based on the possibility that these changes will take effect. Sound estate planning remains essential now and in the future.

LOBBYING BY PUBLIC CHARITIES

(continued from page 4)

For organizations that might want to engage in lobbying activities, a 501(h) election is a simple way to have certainty, clarity and protection from the vagaries of the law that would otherwise apply. In most cases, a 501(h) election makes a lot of sense.

Penelope C. Greenberg is a member of Carr, McClellan's Corporate & Business Law Group.

On-Campus Recruiting

Carr, McClellan has a strong relationship with a number of the law schools in our area and recruits annually on campus. Each summer, we hire law students who have completed their second year of law school as summer associates.

Our program introduces these students to the full range of our practice. Each summer associate is assigned to an attorney who coordinates and supervises the summer associate's work to ensure that he or she obtains a variety of experiences, such as attendance at depositions and trials, business and real estate negotiations, legal research and writing. At the conclusion of each assignment, the summer associate receives a written or oral evaluation.

This year we will be interviewing second year law students at the following law schools:

University of California in Berkeley
(Boalt Hall)
September 20, 2001

University of California
Hastings College of the Law in San Francisco
September 21, 2001

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PERSPECTIVES ON

LAW

Vol. 8 No. 3
Summer 2001



FAMILIES
&
INDIVIDUALS

AU REVOIR ESTATE TAXES?

The dictionary defines *au revoir* as "until we meet again," implying "temporary parting." This is a very appropriate term to apply to the new tax law changes as they relate to the estate, gift and generation-skipping transfer tax provisions.

The new tax law just passed by Congress and signed by the President makes many changes, but when you carefully analyze the law, there is relatively little substance to it. The headlines shout that the death tax has been repealed, but in fact that is only a remote possibility; and even under the law as written, the repeal would be for only one year. That results from the fact that there is a "sunset provision" in the entire law which makes all of the provisions of the law inapplicable after December 31, 2010, unless Congress takes further action.

Here is what the law in fact does with respect to estate, gift and generation-skipping transfer taxes: The current maximum tax rate of 55%, plus the surtax of 5% for estates in excess of \$10,000,000 and less than \$17,184,000, are reduced to 50% effective with respect to persons dying after December 31, 2001. The 50% rate is further reduced by 1% each year until it reaches 45% in the year 2007. The estate tax exemption amount, currently \$675,000, is increased to \$1,000,000 for persons dying after December 31, 2001; to \$1,500,000 for persons dying after December 31, 2003; to \$2,000,000 for persons dying after December 31, 2005; and \$3,500,000 for persons dying after December 31, 2008. After December 31, 2003, the generation-skipping tax exemption amount (currently \$1,060,000) will be adjusted to match the new estate tax exemption amount. The estate tax and the generation-skipping transfer tax are repealed effective with decedents dying after December 31, 2009, BUT the sunset provision makes both of these taxes applicable again for decedents dying after December 31, 2010.

Calendar year	Estate and GST tax deathtime transfer exemption	Highest estate and gift tax rates
2002	\$1 million	50%
2003	\$1 million	49%
2004	\$1.5 million	48%
2005	\$1.5 million	47%
2006	\$2 million	46%
2007	\$2 million	45%
2008	\$2 million	45%
2009	\$3.5 million	45%
2010	N/A (taxes repealed)	Top individual rate under the bill (gift tax only)

There are obviously other provisions with respect to the estate, gift and generation-skipping transfer tax, but the above summarizes the key and most important provisions. There is also a related, very important income tax provision which provides that the step-up in basis which now occurs with respect to property received from a decedent will cease to occur when (and if) the estate tax is repealed. That would bring back carry-over basis, a horror which we experienced in 1977, and which Congress in its then-wisdom suspended and ultimately repealed because of the enormous technical and accounting problems involved. To ameliorate the horror of carry-over basis, the new law allows an aggregate basis increase of \$1,300,000, or \$3,000,000 where the property is acquired by a surviving spouse.

What does all of this mean? History tells us that there will be many changes in the tax laws between now and December 31, 2009 and that it is extremely unlikely that the repeal of the estate tax and the generation-skipping tax will in fact go into effect with respect to people dying after December 31, 2009. To plan one's estate on the basis that such a repeal *might* happen would be folly. Instead, one should plan with the possibility in mind that *it might conceivably happen*, and yet work with all of the tools of estate planning to reduce the amount of taxes that would be payable assuming that the repeal will not go into effect.

The good news is that the exemption amount is increased to \$1,000,000 and that the changes through the next few years will probably take effect. (continued on page 8)

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STRATEGIES
FOR
BUSINESS

NEW EXEMPTION
FROM USURY LAW

By Edward J. Willig, Esq.

Effective January 1, 2001, the California legislature added an important exemption from California's usury law for some types of commercial loans which do not fall under the existing exemption for loans made or arranged by banks, savings and loans, brokers or other financing enterprises. Although narrow in scope, the new law will allow many borrowers and lenders to structure commercial loans that bear interest in excess of the usury limit, which is currently 10% per year.

The state's new usury exemption provides parties on both sides of a loan with total freedom to put together a loan with an agreed upon interest rate higher than the current usury law.

What is the Usury Law?

California's usury law (Article XV, Section 1 of the California Constitution) establishes the maximum rate of interest which lenders may charge, absent an exemption. The maximum rate that can be charged by non-exempt lenders for loans other than for personal, family or household purposes is the greater of (a) 10% per annum or (b) 5% per annum plus the Federal Reserve Bank discount rate on the 25th day of the month preceding the earlier of the date when the contract to make the loan was entered into or the loan was made. The Federal Reserve Bank discount rate is presently less than 5%, so the maximum interest rate on non-exempt commercial loans is currently 10%.

Failure to comply with the usury limit can have serious consequences for the lender: first, the interest provision is void and no interest is payable; second, a penalty of three times the usurious interest which has been paid might be collectible from the lender.

Exempt Lenders and Transactions

Numerous lenders and transactions are exempt from the usury law. Exempt lenders include institutions in the business of lending money (such as banks, savings and loans, credit unions and licensed finance lenders) and

licensed business and industrial development corporations. Exempt loans include those which are made or arranged by licensed real estate brokers which are secured by liens on real property, and loans for which a permit is obtained under the California Corporate Securities Law of 1968.

However, there is no general, self-executing exemption available to businesses and individuals which occasionally make loans. The usury limitation has been especially troublesome in periods of high interest rates when a lender may borrow funds from its bank at an interest rate in excess of the usury limit (for example, 12% per annum), but be unable to collect the rate of interest it is paying because of the usury limit, which might be, for example, 10%.

About the New Exemption

Section 25118 was added to the Corporations Code to provide an exemption from the usury limitation for certain commercial loans. Certain loans may now be structured so that they are exempt from the usury law.

The new exemption applies to the following:

- indebtedness issued (or guaranteed) by an entity which has more than \$2 million in total assets; or
- at least \$300,000 in debt or a written commitment to lend at least \$300,000.

In either case, the following additional requirements must be met:

- Commercial Debt: The debt cannot be for personal, family or household purposes.
- Capacity to Protect Interests or Prior Relationship: The lender and the borrower, or the lender and the guarantor, must either (a) by reason of their business and financial experience (or that of their professional advisors), have the capacity to protect their own interests; or (b) have a preexisting personal or business relationship (either directly or through any of their officers, directors, managers, or controlling persons).

- No Personal Liability: The borrower or guarantor cannot be an individual, revocable trust with an individual trustee, or a partnership with one or more individual general partners. This requirement is likely to be the most significant hurdle to overcome in complying with Section 25118. Although many of the transactions which present usury issues involve loans to business entities, the vast majority of them also involve a personal guaranty issued by the owner or the owners of the business borrowing the funds, and the presence of such a guaranty would prevent the loan from meeting the requirements of Section 25118.

ABOUT OUR
PEOPLE

RECENT DEVELOPMENTS
IN THE FIRM

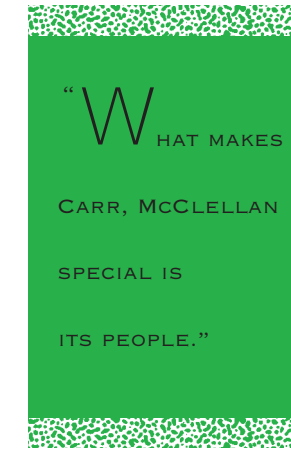
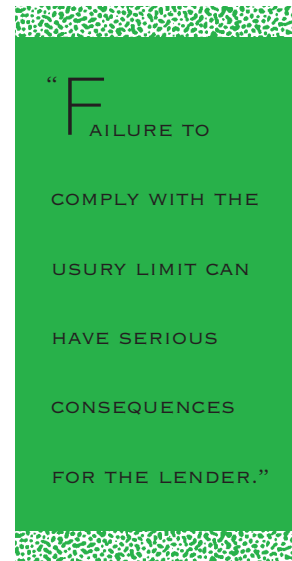
By Mark A. Cassanego, Esq.

In this issue of *Perspectives*, we have attempted to provide our clients and friends with some insights into an eclectic mix of legal developments. **Ed Willig**, Chair of our Corporate & Business Law Group, has elucidated the arcane points of a new usury law exemption while the Trusts & Estates Group has provided you with the "real" story of the repeal of the estate tax. **Denise Trani-Morris** has highlighted developments related to new California employment law matters. These developments have emanated from both the California legislature and the courts. Finally, **Penny Greenberg**, our expert in the non-profit field, has provided us with insight into the lobbying parameters allowed to publicly supported charities. The diverse and in-depth content of this issue reveals the breadth of experience and expertise of our attorneys. We hope you find the articles both instructive as well as interesting.

As I stated in our last issue of *Perspectives*, what makes Carr, McClellan special is its people. We are pleased to report that in 2001 we have strengthened the firm with two new attorneys.

David Rakonitz joined the firm as a tax associate. David was formerly with the San Francisco office of the firm Heller Ehrman White & McAuliffe L.L.P. and is a graduate of Stanford Law School and Williams College. David has extensive experience in California state tax matters, including sales and use tax, as well as federal income tax expertise in the complex area of corporate reorganizations. David will primarily assist Lage Anderson, our principal income tax expert, as well as our transactional attorneys, so that they will be able to be more responsive to our clients' increasingly complex tax questions.

Christopher Shenfield also came on board as an associate in the firm's Litigation Department after having practiced in New Orleans with the firm of Brook, Pizza & Van Loon L.L.P. Chris brings not only litigation



expertise and experience but business and real estate acumen, since he served as manager and legal counsel for a real estate holding company which held properties throughout the United States. Chris is a Tulane Law School and Claremont McKenna College graduate. Chris will assist the partners in our litigation group in providing more efficient and responsive services to our clients.

On a more mundane front, those of you who have recently been in our office have noted that our "Excuse Us During Construction" sign has remained in the lobby since last September. Our remodeling project has finally moved to its last phase, which is the one that will be most evident to you – the makeover of our lobby and conference rooms.

During the course of the last nine months, the firm serially moved each practice group to the third floor of our building so that each area could be completely remodeled with new lighting, carpet and wallcoverings. With that accomplished, the staff have returned and are enjoying their new state-of-the-art workstations. Underneath all of the aesthetic upgrades, the firm structurally re-engineered the entire building for increased seismic integrity. We all feel safer, and know that you will, too, if you happen to visit us during the next earthquake.

Hopefully, as you are reading this, the last phase of our remodeling project is well underway towards completion. We trust that the investment in our office space will make our environment more productive, comfortable and safer for our clients, staff and attorneys.

Finally, this brief firm update would not be complete without mentioning that this past April the Peninsula Community Foundation honored **Albert Horn** with its President's Award for long and exceptional service. While many of our attorneys are honored for their contributions to the community throughout the year, Albert's years of selfless service to this outstanding organization is of special note. We know that you will all join us in congratulating Albert for this honor.

Mark A. Cassanego, Esq. is President of the Firm.

mitigating measures (such as medications or eyeglasses). Under the ADA, a condition is evaluated only after mitigating measures are taken into consideration. Under FEHA, a condition need only "limit" a major life activity (i.e., walking, talking, and working). Under the ADA, the condition must "substantially limit" the employee's ability to participate in major life activities.

Under both FEHA and the ADA, employers are required to engage in a timely, good faith, interactive process to determine effective reasonable accommodations for employees or applicants with a known disability.

2. Sexual Harassment

As of January 1, 2001, co-workers (as well as supervisors) can be held personally liable for sexual harassment. This means that their personal assets are at risk.

FEHA has also recently been revised to expand the definition of a supervisor to include any individual with the authority to "hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees" or who has the responsibility to "direct employees or adjust their grievances, or effectively to recommend that action." Title alone does not determine whether or not an employee is a "supervisor" under FEHA.

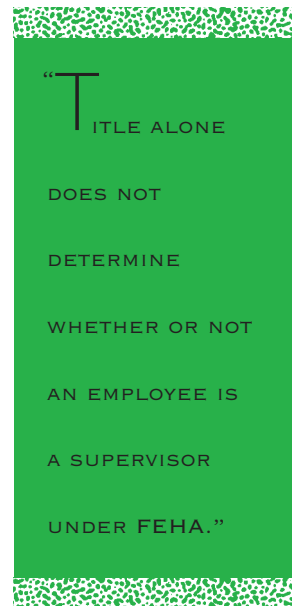
3. "Perceived As" and "Associated With" Protected Categories

FEHA has been amended to expand protected categories to include not only individuals who fall within a protected class (i.e., race/color, national origin, ancestry, sex, religion, over age 40, mental or physical disability, medical condition – including genetic characteristics, marital status, sexual orientation and pregnancy), but also those individuals who are "perceived as" falling in one or more of the protected categories or are "associated with" individuals who fall within one or more of the protected categories.

Leaves of Absence

1. Domestic Violence

As of January 1, 2001, an employer with 25 or more employees may not discharge, discriminate or retaliate against an employee who is a victim of domestic violence and who takes time off to seek medical attention, psychological counseling or participate in safety planning activities. No employer, regardless of size, may discriminate or retaliate against an employee who is a victim of domestic violence for taking time off from work to obtain a temporary restraining order or other court assistance.



2. Volunteer Firefighter

Effective January 1, 2001, an employer with 50 or more employees must allow an employee who is a volunteer firefighter to take a temporary leave of absence, up to a total of 14 days per calendar year, to engage in fire or law enforcement training. No employer, regardless of size, may discharge or discriminate against an employee in any manner for taking time off to perform emergency duty as a volunteer firefighter.

3. Sick Leave

Effective January 1, 2001, California employers who provide sick leave must allow their employees to use the leave to care for their sick children and family members as well.

Injury and Illness Prevention Programs

All California employers are required to have an Injury and Illness Prevention Program. In addition, CAL/OSHA requires employers with 11 or more employees to keep a Log and Summary of Occupational Injuries and Illnesses (commonly known as the CAL/OSHA Form 200). Private employers in certain industry classifications are exempt. As of January 1, 2001, employers must also keep a record of any violence (defined as physical assault or threat of such assault) committed against a community health care worker.

Independent Contractors

As of January 1, 2001, all businesses and government entities that hire independent contractors must file reports with the state Employment Development Department. The required forms can be obtained at <http://www.edd.ca.gov>.

H-1B Employers

On December 20, 2000, the U.S. Department of Labor (DOL) published regulations implementing the H-1B provisions of the American Competitiveness and Workforce Improvement Act and modifying existing H-1B rules. Among other things, these new rules require all H-1B employers to (1) offer benefits to H-1B workers on the same basis as offered to their U.S. workers; (2) pay full wages to any H-1B worker placed in a non-productive status by the employer; (3) comply with whistleblower provisions that protect employees who disclose information about potential violations or cooperate in an investigation or proceeding; and (4) refrain from requiring an H-1B worker to pay the employer's petition filing fees or imposing a penalty for early cessation of employment. The regulations also require evidence from employers who are "H-1B dependent" (i.e., whose workforce is more than 15 percent H-1B workers).

Denise Trani-Morris is a member of Carr, McClellan's Labor & Employment Law Group.

The Usury Law Exemplified

Using a fictitious lender and borrower, the follow example shows how the new usury law could work.

Larry Lender receives a phone call from his brother-in-law, Eddie Entrepreneur. Eddie explains that his corporation, Eddie Incorporated, has spent \$750,000 developing its new product, but is running low on funds. Once Eddie Incorporated has a working prototype of the product, Eddie is sure that he can obtain venture capital financing. However, Eddie thinks he needs another \$500,000 to complete work on the prototype and wants to know if Larry can invest this sum.

Larry is willing to make the investment for a short term, but wants to structure it as a loan. Larry does not have much cash because he invested heavily in dot-coms that became dot-bombs, but can borrow \$500,000 using his home equity line of credit and credit cards at a combined interest rate of 15% per year. Larry tells Eddie that he would usually make such a loan to a start-up at an interest rate of 20% per year, but says he would feel badly if he profited from a loan to a relative. Larry offers Eddie a "special brother-in-law discounted interest rate" of 15% per year on the loan to Eddie Incorporated.

Under the usury law in effect before January 1, 2001, Larry would not have been able to collect more than 10% per year in interest on the loan to Eddie Incorporated. Thus, Larry might decide that while he is willing to help his brother-in-law, he is unwilling to lose money (5% per year) in the process.

Under Corporations Code Section 25118, however, if certain requirements are met, Larry will be able to collect the full "special brother-in-law discounted interest rate" of 15% per year. As a result, Larry is much more likely to make the loan and Eddie Incorporated is much more likely to complete its prototype.

Conclusion

At Carr, McClellan, we frequently encounter situations in which sophisticated parties on both sides of a loan have agreed to an interest rate, only to learn from their legal counsel that the interest rate must be reduced because of the usury limit. While Corporations Code Section 25118 will not exempt all of these transactions, it will provide the parties with an opportunity to structure a loan so that they can have complete independence to agree on the interest rate.

Edward J. Willig is Chairman of Carr, McClellan's Corporate & Business Law Group.



LOBBYING BY PUBLIC CHARITIES: STAYING ON IRS' GOOD SIDE

By Penelope C. Greenberg, Esq.

Many publicly supported exempt organizations have a long history of legislative advocacy. These charities and their boards of directors understand that they are permitted to engage in some lobbying for legislation, but not in a partisan way in political campaigns for candidates for public office. Other exempt organizations may be dubious and unwilling to venture into the realm of lobbying to influence legislation at all.

Both of these groups may have one thing in common, however. They might not realize that there is an easy way and a hard way to stay on the good side of the IRS' lobbying rules. The "easy" way also happens to be the simplest, safest and clearest of the IRS lobbying laws. It is called the 501(h) election.

Understanding the IRS Code

Section 501(c)(3) of the Internal Revenue Service Code provides that "no substantial part of the activities of [an exempt organization may be]...attempting...to influence legislation (except as provided in subsection (h))..." Two different rules are in that one phrase: namely, the substantial part test and the 501(h) election.

One or the other rule governs an exempt organization, but not both. Most organizations come under the substantial part test because they have not made the 501(h) election. At a national conference this past April, the former Director, Exempt Organizations, Technical Divisions, IRS, noted that only 7,000 - 8,000 organizations have filed the 501(h) election. There has been some notion that a 501(h) election makes an organization more likely to be selected for audit by the IRS. However, just the opposite is true, according to the former IRS Director, who stated flatly, "The advantages [of a 501(h) election] are enormous."

Substantial Part Test versus 501(h) Election

The problem with the substantial part test is that it contains no firm guidelines as to what is substantial and what is unsubstantial; the decision is based on the facts and circumstances of a charity's particular situation. This makes it difficult for directors and staff to know whether the organization's activities are at such a level as to be "substantial" and therefore in violation of the tax law. Another disadvantage is that the unreimbursed activities of bona fide volunteers

are included in determining whether "substantial" activities have taken place.

In contrast, the 501(h) election has none of these problems. The limit of permissible activity is clearly set, based solely on expenditures and not on vague, non-financial factors. Specific definitions in the statute provide guidance, and the activities of unreimbursed volunteers do not affect the determination.

Under 501(h), the amount permitted to be spent on lobbying is a percentage of the organization's "exempt purposes expenditures," which is basically the amount the charity spends performing its mission. In any taxable year, a charity may spend the following amounts on lobbying to influence legislation:

- 20% of the first \$500,000 in exempt purposes expenditures;
- 15% of the next \$500,000;
- 10% of the next \$500,000; and
- 5% of everything after that – up to the \$1 million absolute limit on lobbying expenditures. (An organization would have to have an annual budget of \$17 million in exempt purposes expenditures to reach the \$1 million lobbying expenditure limit.)

About the 501(h) Election

Making a 501(h) election is extremely simple. The one-page election form, Form 5768, requires just seven pieces of information: name, address and tax ID number of the exempt organization; tax year for which the election will first be effective (either the current tax year or a future one as an election cannot be retroactive); and the signature, title and date of the officer or director signing the form. That's it. There is no filing fee. The election stays in effect forever, until revoked by using the same form and indicating the first tax year in the future to which the revocation applies.

Why would an organization not want to make a 501(h) election?

- It wants to spend more than \$1 million annually in lobbying (provided that the organization's budget and scope of operations are so great that spending \$1 million would not be a "substantial part" of its activities).
- It does not want to be restricted to the lower grassroots lobbying limits of 501(h).
- It is not qualified, as is the case for churches, their auxiliaries and affiliates, and private foundations. The law prohibits all of these entities from making the election.

Defining Lobbying and Legislation

Currently, under the 501(h) election, no more than a quarter of the total amount permitted

to be spent for lobbying may be spent for grassroots lobbying. Intricate rules define grassroots lobbying, but the whole issue might disappear if Congress follows the recommendation of its tax advisors and eliminates the distinction between grassroots and other lobbying.

"Influencing legislation" is defined for purposes of the 501(h) election as (1) "any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof" (this is also termed grassroots lobbying) and (2) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation." "Legislation" is defined as including "action with respect to acts, bills, resolutions or similar items by the Congress, any state legislature, any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment or similar procedure."

A good way to understand what constitutes lobbying is to understand the following points. Lobbying is not:

- Discussing general issues, without reference to any particular piece of legislation and without taking a position on any piece of legislation;
- Making available the results of nonpartisan analysis, study or research;
- Providing information to or appearing before a governmental or legislative body when that body requested the information or appearance; and
- Communicating about legislation that is of direct interest to all the organization's members, if the communication stays between the organization and its bona fide members.

501(h) Makes Sense

For some public charities, taking stands on legislation and encouraging the passage of laws in their interest are natural and comfortable activities. Other organizations, their board members and staff may feel that lobbying is not compatible with the charity's sense of itself and its role in the community. Both viewpoints are valid, of course. However, the decision should turn on the exempt organization's own considered philosophy and not on a mistaken belief that the law does not allow legislative advocacy or that lobbying activities unavoidably subject the organization to uncertainties that could threaten its tax exempt status.

(continued on page 8)

LABOR LAW

EMPLOYMENT LAW DEVELOPMENTS NEW FOR 2001

By Denise Trani-Morris, Esq.

Recent legislation and published court decisions have dramatically changed employment laws and regulations. It is critical that employers understand, and comply with, these new rules. Some of the more significant changes include the following:

Wage and Hour

1. Exempt vs. Nonexempt Tests

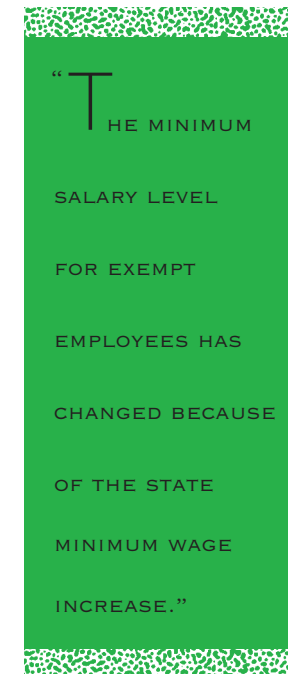
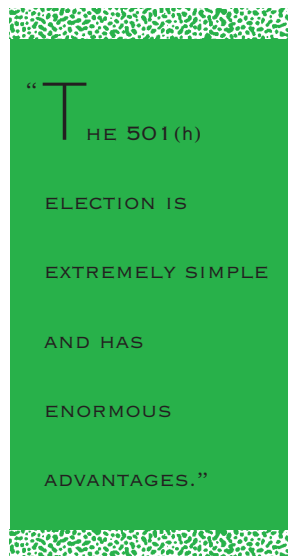
The California Industrial Welfare Commission (IWC) has made changes to the tests employed to determine whether or not an employee is exempt under both California and federal law. To determine whether an employee falls within one of the exemptions (i.e., executive, administrative, professional or computer professional) requires a review of both duties and salary level.

The IWC has expanded the way it construes the definition of "primarily engaged in exempt work" so that it now means that an exempt employee must spend more than 50% of his/her time doing exempt duties or work that is "directly and closely related to exempt work," or which is "properly viewed as a means for carrying out exempt functions."

In addition, the minimum salary level for exempt employees has been changed because of the state minimum wage increase. Effective January 1, 2001, the minimum salary level for exempt employees is \$2,166.66 a month. On January 1, 2002, the state minimum wage will increase again, requiring the exempt salary minimum to be \$2,340 per month.

2. Alternative Workweeks

Regulations concerning alternative workweek schedules have been clarified. Alternative workweeks apply only to non-exempt employees, and allow the employee to work more than eight hours in one day without incurring overtime pay (i.e., four 10-hour days). A step-by-step guide is available for employers interested in creating and maintaining a valid alternative workweek



schedule. If you would like one, call Denise Trani-Morris or Elisë Clowes at (650) 342-9600.

3. Make-Up Time

Make-up time is permitted under the revised regulations. Upon the employer's approval of a written request by an employee, employees may make up three hours of work time per day for time lost due to a personal obligation. However, an employee may not work more than 11 hours in one day to offset the lost hours.

4. Posting Requirements

All employers are required to post their IWC Wage Orders in the workplace. The IWC revised the wage orders on October 1, 2000, making the previous versions obsolete.

Arbitration

In August 2000, the California Supreme Court confirmed that employers have the right to require employees to sign mandatory arbitration agreements as a condition of employment. The Court placed significant restrictions on those agreements in order to be enforceable.

Essentially, the arbitration agreement must provide for: (1) a neutral arbitrator who will provide a written decision disclosing the essential findings and conclusions upon which the award is based; (2) adequate discovery; (3) availability of all remedies the employee would be able to obtain in the civil forum, including punitive damages and attorneys' fees; and (4) payment of the arbitration costs by the employers, other than normal administrative fees the employee would otherwise have to bear in a civil forum.

Overall, the arbitration agreement cannot be overly harsh or one-sided. Harassment and discrimination claims can be subject to arbitration provided that the claims are clearly set forth. If binding arbitration agreements are entered into, both the employee and employer agree to waive their right to a jury trial.

Anti-Discrimination Laws

1. Disability Discrimination

California has significantly broadened the definition of "disabilities" under California's Fair Employment and Housing Act (FEHA). FEHA now provides employees with more protection than they have under the Federal Americans with Disabilities Act (ADA).

FEHA applies to employers of five or more employees or independent contractors. The ADA applies to employers of 15 or more employees.

Whether or not an employee has a disability under FEHA is determined without regard to