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What's Inside

Mark's In Box

Dude! Unions stand to make major gains if voters pass Prop. 19 3

Legislation

Governor Schwarzenegger signs final bills from last legislative session 4

Breaks

Court says corrections officers not required to get meal breaks 5

Enforcement

EEOC is taking hard look at discrimination claims in California 7

Employee Benefits

Ninth Circuit says Raytheon can't back out of providing promised benefits 8

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STATE EMPLOYEE FURLOUGHS

California Supreme Court upholds furloughs of state workers

by Michael Futterman

The California Supreme Court has upheld Governor Arnold Schwarzenegger's executive order requiring mandatory furloughs of state workers to help bridge California's massive budget gap. Although the court found that the governor didn't have unilateral authority to impose the furlough program, the California Legislature had effectively ratified his furloughs when it passed the final state budget.

Governor furloughs state workers to balance budget

California's economic prospects looked bleak in late 2008. The stock market plunged, real estate prices fell, and the credit markets froze. The state faced a projected budget deficit of more than \$40 billion and the likelihood that it would run out of cash in early 2009, forcing it to issue IOUs to its creditors. In response, Governor Schwarzenegger submitted a proposed budget to the legislature that included a one-day-a-month furlough of state workers. The legislature didn't enact his proposed budget before the legislative session ended on November 30, 2008.

On December 1, 2008, after the newly elected legislature took office, the governor issued a proclamation declaring a fiscal emergency and called the legislature into special session. He resubmitted the same budget package

he had submitted the previous month. The legislature didn't enact his proposed budget. Instead, it passed its own budget legislation in 15 separate bills, without the furlough provision. Governor Schwarzenegger vetoed all 15 bills.

On December 19, the governor issued an executive order requiring that state workers employed by the executive branch take a mandatory two-day-a-month unpaid furlough from their jobs from February 2009 to June 2010. State offices would be closed the first and third Fridays of each month. He then immediately entered into negotiations with the collective bargaining representatives of state employees about the furlough program. Meanwhile, on February 19, 2009, the California Legislature passed and the governor signed budget legislation in response to the fiscal emergency. One provision of the new law authorized reductions in state employee compensation "achieved through the collective bargaining process . . . or through existing administration authority."

In response to the furloughs, three organizations representing state employees filed separate lawsuits trying to block the program, arguing that it was beyond the governor's authority. The trial court treated the cases as related, and in a single decision, it ruled against the employee organizations, finding

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that the governor possessed the authority to impose furloughs in response to the state's fiscal emergency.

Before the California Court of Appeal could hear the matter, the California Supreme Court swooped in and exercised its authority to transfer the case so that it could decide the matter itself. After a lengthy analysis of the state constitution, statutes, and legislative history, the supreme court affirmed the trial court's decision on the grounds that the legislature had effectively approved the governor's furlough program when it passed revisions to the state budget in February 2009.

Governor can furlough workers with legislative approval

Under the California Constitution, the legislature and the governor share responsibility for the state's finances and budget process. The governor must submit each year in early January a proposed balanced budget for the next fiscal year (July 1 through June 31), and the legislature must pass a balanced budget by June 15 of each year, the latter a rule recently honored mostly in the breach.

The first issue addressed by the supreme court was whether the governor, during a fiscal emergency, has the authority to impose a mandatory unpaid furlough unilaterally by issuing an executive order. The state employee organizations contended that such a measure could be taken only if:

- (1) the memorandum of understanding (*i.e.*, the collective bargaining agreement) between the state of California and the employee organization allocated that authority to the state; or
- (2) the furlough program was approved by the legislature.

After an exhaustive analysis, the court concluded that a governor may take some unilateral steps relating to state employment during a fiscal emergency, such as choosing not to fill vacant positions or encouraging state employees to voluntarily take unpaid leave. However, in this case, the specific question was whether the governor has the authority to impose a mandatory reduction of the work hours and wages of state employees. Ironically, although there is a statute that authorizes *layoffs* of state workers, there is *no* comparable statute authorizing a *reduction in hours and wages*. Thus, the supreme court held that the governor had no authority to unilaterally impose unpaid furloughs on state employees.

That didn't end the inquiry, however. The supreme court closely examined the February 2009 legislation revising the state budget and determined that in passing that law, the legislature had effectively approved the furlough program. First, the law explicitly reduced the annual appropriation for state employee compensation to a level reflecting the reductions achieved by the governor's furlough plan. Second, the law stated that the reduction in state employee compensation could be achieved through "*existing administrative authority*." The supreme court interpreted that phrase to encompass the then-existing furlough program — *i.e.*, in allocating responsibility to the governor to use his "*existing administrative authority*" to reduce employee wages, the state legislature effectively ratified the mandatory two-day-a-month furloughs. *Professional Engineers in Cal. Government v. Schwarzenegger* (California Supreme Court, 10/4/10).

Bottom line

The California Supreme Court rejected Governor Schwarzenegger's claim of unilateral authority to furlough state workers in a fiscal emergency.

continued on pg. 4

continued from pg. 2

However, in a Solomonian decision, the court approved the furlough program itself because the California Legislature had approved it. Thus, the court effectively sidestepped the tug of war between advocates of executive and legislative power, while on a practical level doing its part to preserve fiscal sanity in California.

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