New California Statute Regulating the Paralegal Profession

California has enacted a new statute regulating the paralegal profession. If your company is based in California and your legal department includes in-house paralegals, you will need to ensure that your department is in compliance with this new law.

The law, which took effect January 1, 2001, adds a new chapter to the California Business and Professions Code, starting with section 6450. You should consult the text of the statute itself for a comprehensive view of its requirements. This Client Alert will provide a summary of the most salient features of the statute. (You can find the text at http://www.leginfo.ca.gov. Click on “California Law” and Business Professions Code, Keyword 6450.)

Paralegals as a Regulated Profession
The new law establishes, for the first time, a regulatory scheme applicable specifically to the paralegal profession. It includes specific educational and experience requirements, continuing legal education requirements, and substantive limitations on what paralegals can and cannot do.

Although the statute states specific criteria that must be satisfied in order to operate legally as a “paralegal,” it does not establish a mechanism for registering formally as a paralegal, and there is no equivalent for the certificates of admission that attorneys must obtain to practice law. Rather, it simply will be unlawful to practice as a paralegal in violation of the credentialing and substantive restrictions of the statute. You only need to confirm that your paralegals meet the statutory requirements.

One of the major features of the statute (and a principal motivation for its enactment) is the abolition of the so-called “independent paralegal”—a non-lawyer who provides services directly to consumers or other clients without the involvement of an attorney. Under this statute, paralegals are allowed to practice only under the direction and supervision of licensed attorneys, whether they are employees or independent contractors. This should not present an issue for typical in-house legal departments. However, it does mean that a company cannot hire in-house paralegals (at least with that job title) if it does not also have at least one in-house attorney.

Education and Experience Requirements
Paralegals must satisfy specific requirements of education and experience. There are four ways of complying. The paralegal must have one of the following:
- A certificate from an ABA-accredited paralegal program;
- A certificate from an unaccredited paralegal program or other school, meeting certain stated criteria;
- A bachelor’s or higher degree, plus a year of law-related experience under an attorney; or
- A high school diploma or GED, plus three years of law-related experience under an attorney. (However, the three years must be completed by the end of 2003. Thus, this option is open only to someone already working in a law-related position as of the start of 2001.)

There is no “grandfather” provision for those who already practice as paralegals but do not meet one of these requirements.

The statute does not define what “law-related experience” means. It would presumably include pre-enactment or out-of-state work as a paralegal. It might also include service in a supporting position in a legal office below the level of paralegal, such as work done as a “paralegal assistant” or similar job. (However, as we will note below, it may be necessary to change the job titles of such employees now.)

**MCLE Requirements**

Paralegals must meet stated MCLE requirements:

- Four hours of legal ethics, every three years; and
- Four hours of general or specialized legal education, every two years.

There is no mechanism for reporting or monitoring compliance with this requirement. Paralegals and their supervising attorneys must certify compliance, but the paralegals are responsible for maintaining records of the certifications.

**What Paralegals May Do**

The statute defines the word “paralegal” with a nonexclusive list of activities, thereby authorizing those activities. The permitted tasks include:

- Case planning, development, and management;
- Legal research;
- Interviewing clients;
- Fact gathering and retrieving information;
- Drafting and analyzing legal documents;
- Collecting, compiling, and utilizing technical information to make independent decisions and recommendations to the attorney; and
- Representing clients before administrative agencies, if permitted by the agencies.

The statute acknowledges that this is not an exhaustive list of what paralegals do or may do. However, in all instances the work must be done under attorney supervision.

**Forbidden Activities**

Conversely, the statute expressly lists a number of activities that paralegals are forbidden to do. As applicable to in-house paralegals, these include:

- Providing legal advice;
- Representing clients in court;
- Selecting, explaining, drafting or recommending legal documents, except to the supervising attorney; and
- Practicing law.

**Other Supporting Personnel**

One remaining question is whether it is impermissible to employ people without the minimum credentials to do paralegal-support work, under any job title. Although the statute does not give a clear answer, the legislative history suggests strongly that it remains
lawful to employ such lower-level assistants, provided that they are given appropriate job titles.

These more junior employees should not be named paralegals, legal assistants or any variant on those terms. If you have such employees in California, we recommend that they be given job titles that do not use the words “paralegal” or “legal.”

Employees who cannot be paralegals (because they don’t meet the specified criteria) are clearly prohibited from holding themselves out as “paralegals” (or equivalent terms). There is nothing in the statute prohibiting them from collecting documents, gathering facts, conducting legal research and other similar tasks.

**Other Provisions Governing Paralegals**

Paralegals are expressly made subject to the same duties of client confidentiality as attorneys (see Cal. Business & Professions Code § 6068(e)). However, they are not made directly subject to the other ethical restrictions on attorneys, such as those relating to conflicts of interest.

Supervising attorneys are expressly liable for any harm caused by paralegals’ negligence, misconduct or violation of this statute. (You may want to confirm that the insurance you hold for the protection of your in-house attorneys will cover this.)

Civil remedies and criminal penalties are provided for violations of the statute.
If you have any questions about this Client Alert, please contact Charles S. Treat in our San Francisco office, or any of the attorneys listed at the right.

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