

TOP OF THE NEWS

Jury Award for Harassment

A federal jury in Tallahassee, Florida, has awarded \$1.34 million to four women who said one of the owners of Associated Security Enforcement, Inc. subjected them to a sexually hostile workplace.

The U.S. Equal Employment Opportunity Commission (EEOC) brought the sexual harassment and retaliation lawsuit on behalf of four former employees who said one of the company's owners subjected employees to harassment when he groped one of the women's breasts, requested sex in exchange for money, invited the women for overnight stays, and frequently requested oral sex. EEOC says that Associated Security failed to take necessary steps to stop the harassment, despite complaints to the company's co-owner.

After a two-day trial, the jury awarded \$35,000 each to two of the four women and \$25,000 each to the other two women to compensate them for the emotional pain and suffering. The jury also assessed punitive damages against Associated Security in the amount of \$300,000 each for all four women. In addition, the jury granted plaintiffs' request for back pay totaling approximately \$17,000 for two of the women.

The EEOC said that the women repeatedly rebuffed the owner's conduct and complained directly to the co-owner of the company. The EEOC alleged that the company failed to implement corrective action. [PE]

More Big Name OT Settlements

Ann Taylor Stores has agreed to pay \$6.5 million to settle two class action lawsuits charging that the company improperly classified store managers in California as exempt from overtime and violated meal and rest period rules. The settlement will affect up to 800 store managers, senior assistant managers, and assistant managers in 95 Ann Taylor stores in the state. In connection with the settlement, Ann Taylor did not admit to violations, stating that it settled to avoid the significant costs and time of protracted litigation.

A federal judge recently oversaw and approved a \$19.5-million settlement of overtime claims brought by more than 1,300 insurance agents of the Automobile Club of Southern California who claimed they were denied overtime pay despite working more than 60 hours a week and were required to purchase gifts to bolster sales.

A class action lawsuit was recently filed against brokerage firm Morgan Stanley for allegedly failing to pay overtime to its brokers and financial advisor trainees. The lawsuit also claimed Morgan Stanley made improper salary deductions from more than 4,000 current and former employees in the state of California. Morgan Stanley has just agreed to pay a \$42.5 million class action settlement for unpaid overtime wages of California brokers.

Some time back, Farmers Insurance Company settled the largest overtime claim in US history with a settlement in Alameda County of over \$200 million for misclassifying 2,402 California-based claims adjusters as administrators who would be exempt from overtime.

Employers who may question their overtime practices may contact the staff at *Pacific Employers*. [PE]

Interactive Process Flyer Enclosed!

President's Report

~Dave Miller~

Deaf Worker Wins \$108,000

A federal jury in Baltimore has socked Federal Express Corporation with a \$108,000 verdict for violating the Americans with Disabilities Act (ADA) by failing to provide a deaf employee with a reasonable accommodation.

According to the suit, which was filed by the U.S. Equal Employment Opportunity Commission, package handler Ronald Lockhart, who is deaf, repeatedly requested reasonable accommodations in the form of American Sign Language interpreters, but FedEx allegedly failed to cooperate.

The jury found FedEx liable for punitive damages in the amount of \$100,000 for its knowing failure to accommodate Lockhart, as well as compensatory damages of \$8,000 for the loss of the accommodation itself. [PE]



The Interactive Process

The preceding story makes all too clear that the state and federal law require that an employer provide reasonable accommodation for qualified applicants and employees who, because of their disability, are unable to perform the essential functions of their job.

A local financial institution was recently found guilty when it failed to provide accommodations to an employee and had reduced her wages and benefits after she was diagnosed with breast cancer. A Tulare County Superior Court jury ordered the credit union to pay its former vice president of lending \$3.2 million in an employment discrimination case.

It is unlawful for employers to fail to engage in a timely, good faith, interactive process whether or not the interactive process would have resulted in an obligation to provide a reasonable accommodation.

California State and Federal laws define the "interactive process" as an on-going communication between the employer and the applicant or employee with a known disability in an effort to provide reasonable accommodation.

Enclosed is a description of the "Interactive Process" to give you an opportunity to see how the process would work in your situation. If you have an opportunity to be concerned about the possibility that an individual may have a disability that requires accommodation, and that might also require engaging in the interactive process, and still need help, give our staff at Pacific Employers a call. [PE]

Poverty of purpose is far worse
than poverty of purse.

UPDATED LEGISLATION

New Weapon for Data Theft

Companies have a new weapon against employees who leave to join the competition and, on their way out, access information from their former employer's computer system without authorization.

Companies are increasingly turning to the Computer Fraud and Abuse Act ("CFAA"). Amendments have greatly expanded this 1994 law and recent court decisions, especially the Seventh Circuit's March 6th decision in *International Airports Centers v. Citrin*, make CFAA an attractive weapon against disloyal employees. Damages and injunctive relief are available and, more important, a federal cause of action that does not require that confidentiality, trade secret and/or non-compete agreements be in place.

When CFAA was passed in 1994, it covered mainly classified information on government computers. Successive amendments have greatly expanded its scope.

Civil remedies were added in 1994 and, in 1996, Congress:

- extended CFAA to any "protected computer" (i.e., any computer used in interstate or foreign commerce) and
- removed the "unauthorized access" requirement, thereby covering company insiders in addition to outside hackers.

The courts have cooperated by giving the amended CFAA a broad interpretation. In *Shurgard Storage Centers Inc. v. Safeguard Self-Storage Inc.*, former Shurgard employees—while still on its payroll—used its computers to send trade secrets and proprietary information to Safeguard, the new employer they had already agreed to join. CFAA covers intentional access to a computer without authorization and obtaining information from a computer by exceeding authorized access. The former employees argued that they retained their existing authority to access Shurgard's computer system as long as they remained its employees and, therefore, had not acted without authority or in excess of their authority. The court dismissed this argument, noting the employees' authority to access Shurgard's computer system evaporated when they began acting as agents for Safeguard.

CFAA covers abuse of a computer system and the data on that system. A recent decision by the Seventh Circuit reveals the act will prohibit, in Judge Richard Posner's words, "attacks by disgruntled programmers who decide to trash the employer's data system on the way out (or threaten to do so in order to extort payments)." In that case, an employee of International Airports Centers ("IAC") decided to go into business for himself and, before leaving IAC, savagely attacked IAC's computer files. He first deleted all data, then installed a secure-erasure software program, making it impossible for IAC to recover any of the deleted information.

CFAA covers more than the losses directly caused by the employee's unauthorized access to the employer's computer system. It also covers damage assessments and security update and restoration or replacement costs, as well as any revenue lost or costs incurred or other damages resulting from any impairment or interruption of service. Damages must be more than \$5,000 in any one-year period. That modest minimum should easily be reached when hiring a consultant to determine if the employer's website is secure or compromised. [PE]

"Workers Comp Revisited"

Although the reform package passed by the Legislature has caused a reduction in workers compensation premiums, most employers will agree that more needs to be done. California business owners have the unfortunate distinction of being one of the most regulated in the country and worker's comp issues are at the top of most employer's list.

We have noticed that after the "reform" new carriers of workers comp insurance are writing policies in California. We have also noticed that at least one of the new vendors has taken a very aggressive approach to fraud.

This carrier is ahead of the curve on either settling the cases or ferreting out fraud. What I mean is that, this particular carrier has within a few weeks of being notified of a claim assigned a Defense Attorney on behalf of the employer and has scheduled a deposition of the claimant.

As most employers are aware, most carriers let the claim "mature" for several months and increase the premiums based on the claim. This is costly and only adds frustration to the process. Eventually, the claim is settled after (sometimes) several years.

Unknown to this particular new carrier, the employer had already suspected that the claim was fraudulent and we have the video tape to prove it. What is going to happen with this particular claim is that the attorney representing the employer is going to have evidence of fraud when he/she deposes the claimant.

Obviously, the employer wants to prosecute the claimant, however, regardless of which direction the claim takes, for once, the employer has the advantage. We believe it will ultimately be resolved in the employer's favor. It is refreshing that the carrier has taken this approach to aggressively save the employer and the carrier time and money.

Remember, the key in all workers comp claims is to document, document and document. Be very detailed in any communications with an allegedly injured worker. Use a calendar and make notes about communications with the claimant. Review all the Doctor's reports and documents from your carrier.

If you suspect fraud let your carrier know and let them know that you will prosecute! Thanks for reading and next month we'll cover some tips on documenting accidents in the workplace.

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Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

Exaggerated W-4's

Q: "An employee just gave me a W-4 that will eliminate my taking income tax from her paycheck. What should I do?"

A: The IRS requires that you not knowingly accept an invalid W-4 form.

New IRS Rules in 2005

Employer's Obligations With Respect to Accepting and Rejecting W-4s changed in 2005 when, in an effort to combat tax avoidance, the IRS required any W-4 listing more than ten personal allowances to be filed with the IRS. However, beginning in 2005, the IRS abandoned that practice in favor of a different process. The current requirements for accepting and rejecting W-4s are:

- An employer should not knowingly use an invalid Form W-4 to calculate withholding.
- The employer should tell the employee when a W-4 is invalid and ask for another one.
- If the employee does not provide a valid W-4, the employer should withhold taxes as if the employee were single and claiming no withholding allowances; or, if a prior Form W-4 is in effect with respect to the employee, the employer should continue to withhold in accordance with the prior valid W-4.
- If an employee submits a W-4 that eliminates all withholding requirements (claims "exempt"), the employee must verify:
 - (1) that he or she was entitled to a full refund of all income taxes withheld because he had no income tax liability for the prior year, and
 - (2) that he or she expects a full refund during the current year because he or she expects to have no tax liability.
- A W-4 claiming "exempt" from withholding is only good until February 15 of the calendar year following the year in which the withholding is to be eliminated. Thus, an employee must execute a new W-4 by February 15 of each calendar year if he or she wants to avoid having any income tax withholding.
- If the employer receives a letter from the IRS, called a "lock-in" letter, the employer must disregard the W-4 and any W-4s subsequently executed by the employee and follow the IRS' withholding instructions, unless the new W-4 would withhold more than the IRS requires. [DE]

EMPLOYMENT SEMINARS

S PONSORED BY THE SMALL BUSINESS DEVELOPMENT CENTER (SBDC) and the **Workforce Investment Board** at 10:00 am on the 3rd Thursday monthly at 4025 West Noble Avenue, Suite A, Visalia. We ask that you RSVP to the Small Business Development Center at - 559 625-3051 or Fax - 559 625-3053.

2006 Seminar Schedule

♦ **Understanding SB-198 - the IIPP!** - If you have one or more employees, you must have the IIPP! Developing & Using Cal/OSHA's Written Safety Programs.

Thursday, April 20th, 10am - 11:30am

♦ **"EXTRA" Free - two hour Bookkeeping & QuickBooks Workshop** at the Visalia Chamber of Commerce, conference room,

220 N. Santa Fe, Downtown Visalia,
Wednesday, April 26th from 10:00AM till Noon.
RSVP to the Chamber Office at 734-7479.

♦ **Leaves - Federal & California Family Medical Leave, California's Pregnancy Leave, Disability Leave, Sick Leave, Workers' Compensation, etc.;** What are the Pitfalls & How do you handle them? We will discuss implementing them all.

Thursday, May 18th, 10am - 11:30am

♦ **Exempt Status - Salary?** From what are they Exempt? Does a Title make them Exempt? Do specific Duties make them Exempt? What makes/keeps them Exempt?

Thursday, June 15th, 10am - 11:30am

♦ **Hiring & "At-Will" Employment -** From the Employment Application to the I-9 Form, we cover hiring. We also discuss maintaining an employee policy that protects you from the "For-Cause" Trap!

Thursday, July 20th, 10am - 11:30am

♦ **Posters, Signs, Forms, Handouts, Fliers -** With all the new laws out there, what posters, flyers and handouts does an Employer Need?

Thursday, September 21st, 10am - 11:30am

♦ **Guest Speaker Seminar -** Annually we bring you a speaker for a timely discussion of labor relations, HR and safety issues of interest to the employer.

Thursday, October 19th, 10am - 11:30am

♦ **Progressive Discipline & Effective Termination -** In the last seminar of the year we discuss the steps to take before discharging an employee to avert a lawsuit! We examine how to set up a progressive instruction, correction, punishment and termination program.

Thursday, November 16th, 10am - 11:30am

These morning seminars are free of charge and include refreshments and handouts.



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MANAGEMENT ADVISOR

Celebrating 41 Years!

Articles in this Newsletter have been extracted from a variety of technical sources and are presented solely as matters of general interest to employers. They are not intended to serve as legal opinions, and should not be deemed a substitute for the advice of proper counsel in appropriate situations.

WORKERS COMP FRAUD

Sacramento man faces fraud charges

A Sacramento man is in custody on suspicion of workers' compensation fraud for an injured thumb, authorities said.

Wayne Allen Sorenson, 35, was recently arrested on suspicion of four felony counts of providing false information in support of an insurance claim, California Department of Insurance officials said in a press release.

Sorenson began receiving temporary total disability benefits after he injured his thumb while repairing a conveyor belt on March 2, 2002, at Bauer San Juan Car Wash at 5927 San Juan Ave. in Citrus Heights, near Sacramento.

He continued to collect his disability payments after he got other jobs at AAA Car Care Plus at 49 Bicentennial Court and Gem Auto Wash at 5150 Freeport Blvd., officials said. The payments totaled about \$50,000 by the time he was arrested March 10. [PE]

FREE & UNLIMITED CONSULTATION?

Yes FREE! One benefit of Pacific Employers' Membership, is Free, Unlimited, direct, phone consultation on safety matters, Cal/ OSHA or any labor question on the Pacific Employers' Helpline at: (559) 733-4256 or Toll Free (800) 331-2592.

"FOCUS ON ACCOUNTING" WORKSHOP

During the year, our clients call our office with payroll and bookkeeping questions that are better directed to an accountant and/or a software expert.

Now that the "Tax Season" is winding down and with everyone using QuickBooks, **Pacific Employers**, in conjunction with the **Visalia Chamber of Commerce** is happy to announce a QuickBooks workshop to help employers get a grip on this popular program.

Local CPA, **Rich Artis** of **Artis Hare & Co.** and **Computer Gym** software expert, **Eric Lindberg**, will present the no cost morning workshop to show you what bookkeeping tricks will best serve your business, and help you learn how best to use this popular software to do things quicker and make your life easier.

The "Free," two hour QuickBooks Workshop includes a workbook, refreshments and an opportunity for computer time! It will be held in the beautiful new Conference Room of the Visalia Chamber's new home at 220 N. Santa Fe, in Downtown Visalia on Wednesday, April 26th from 10:00AM till Noon. Please RSVP to the Visalia Chamber of Commerce Office at 734-5876. [PE]

FREE WORKSHOP -> INCLUDES QUICKBOOKS REPORTING!