

TOP OF THE NEWS

The Social Security Number Verification Service

(<http://www.socialsecurity.gov/employer/ssnv.htm>)

The Social Security Administration (SSA) maintains a SSN Verification Service (SSNVS). There are two Internet verification options employers can use to verify that employee names and Social Security numbers match Social Security's records. Employers can either verify up to 10 names and SSNs (per screen) online and receive immediate results, or upload batch files of up to 250,000 names and Social Security numbers and receive results the next government business day. Employers need to register to use SSNVS and request an access and activation code. Codes are mailed to the employer approximately two weeks from registration.

IF A SSN FAILS VERIFICATION, EMPLOYERS SHOULD:

Compare the failed SSN to their employment records to make sure there is no typographical error; if there is a typographical error, employers should resend only the correct data, not the entire submission.

If employment records match what was submitted, employers should ask the employee to check their Social Security card and inform them of any differences between the employer records and their card. If the records and the card match, the employee should check with a local Social Security Office to determine and resolve the issue. Employers should tell

employees to inform the employer of any changes and the employment records should be revised accordingly. The SSA provides a sample letter that employers can provide to an employee. This letter can also be found at <http://www.socialsecurity.gov/employer/ssnv.htm> under the heading "More Information," "Sample Letter to Give to Employees."

If the employee is unable to provide a valid SSN, employers should document their efforts to obtain the corrected information. This documentation should be retained for a period of three years.

NOTE: During the verification process and corresponding time limits, the employee is assumed to be work eligible for purposes of state and federal law. The Social Security Administration specifically notes that employers should not use SSNVS to take punitive action against an employee whose name and Social Security number do not match Social Security's records. A mismatch does not make any statement about an employee's immigration status and is not a basis, in and of itself, for taking any adverse action against an employee. Doing so could subject the employer to anti-discrimination or labor law sanctions. [PE]

Harassment Guidelines Enclosed!

President's Report

~Dave Miller~

No One Speaks Spanish?

Just back from checking the Department of Industrial Relations (DIR) website to see if they have come up with a Spanish version of the minimum wage poster.

Our clients look forward to our annual revision of the "All-In-One" poster that we mail out at the end of the year. We also periodically prepare a Spanish version of that same poster when we determine that changes warrant it. And certainly, with a major change in the California minimum wage, an update is called for. However, the DIR has not yet chosen to publish the official Spanish version of the minimum wage poster.

Is it possible that there is no one in Sacramento that can speak or write in Spanish, or are there so few people who read Spanish in the state that they feel it is not necessary?

I would really like to know the reason for the State's lack of attention in this matter. [PE]



Union Withdraws from Election

California Wire Cloth, Inc., in the Visalia Industrial Park, had been petitioned by the Sheetmetal Workers' International Union in February this year for an election before the National Labor Relations Board.

The goal of the Union was to acquire representation rights for the 33 production worker and driver employees of the Visalia manufacturing plant that produces rock crushing and sorting equipment. The company, whose CEO, is Tom Lentsch of Visalia, has 12 other related firms throughout the United States from Michigan to Virginia to Texas.

The Visalia employees enjoy higher than average wages and benefits in the Visalia plant and most are long term employees. The employees appear to be happy with their lot, but one employee who had received one wage increase during the last year seemed to be the root of the Unions organizational campaign.

The Sheet Metal Workers' were apparently not able to get or keep the momentum needed for a successful election and on the eve of the NLRB vote, withdrew their petition. The Director of Region 32 Board of the NLRB granted their request and the election was cancelled. [PE]

History is a vast early warning system.
— Norman Cousins

Prof Scams WC & College

A MiraCosta College professor falsified payment invoices and deceived workers compensation investigators as part of an illegal partnership to grow and sell palm trees on campus the college discovered following a long investigation.

Horticulture professor Alleen Texeira and fertilizer salesman Jack Wackerman conspired to use MiraCosta land, water and student workers to grow palm trees for their own personal gain over an eight-year period, a private investigator concluded in a summary he gave to the college in July.

College trustees estimated that Texeira and Wackerman spent \$300,000 in taxpayer money cultivating palm trees. Trustees did not provide an estimate of the revenue generated, but they said they intend to recover all illegal proceeds.

In the same letter, trustees said that Texeira tried to allow Wackerman to remove the 2,300 palm trees remaining on the property after the alleged scheme was uncovered. The trustees estimated in the letter that the remaining palms were worth \$222,370.

According to the investigator, Texeira and Wackerman were living together in 1997 when Wackerman learned that palm trees had been abandoned by The Palm Co. in southwest Oceanside, which had gone out of business

Texeira then allowed Wackerman to reconfigure a portion of the college's 10-acre "growing area" to use as his own for palm tree cultivation, free of charge, the investigator concluded. Texeira also hired student workers expressly for the purpose of tending Wackerman's palms and selling them, the investigator's report said.

When a student worker who tended to the palm trees filed an injury workers' compensation claim against the college in 1999, Wackerman and Texeira made false statements to claims adjustors and attorneys working on the claim, the investigator concluded.

In particular, Texeira did not tell MiraCosta's risk manager about her arrangement with Wackerman or the fact that the student employee performed work for Wackerman, the investigator's report said.

Wackerman, who had no workers' compensation insurance, made false statements to a MiraCosta attorney in a successful effort to get the college to indemnify him against the claim, the investigator concluded.

Specifically, Wackerman told the attorney that he had been recruited by Texeira to take care of some donated palms that the college could not afford to nurture, according to the investigator's report. Wackerman never mentioned his Palms and More business, or his arrangement with Texeira, the investigator concluded. [PE]

AB 1825 SHPT Quarterly Seminar

Sexual Harassment Prevention Training

The Visalia Chamber of Commerce and Pacific Employers, will jointly host the state mandated Supervisors' Sexual Harassment Prevention Training Seminar & Workshop with full breakfast on **April 18th, 8:00am—10:30am**, at the Lamp Liter Inn in Visalia.

Call the Visalia Chamber to RSVP - 734-5876
\$25 for Pacific Employers and Chamber members
Certificate – Forms – Guides – Full Breakfast

Court: 'Prevailing Wage' Must Be Paid

Contractors building public works projects in California must pay prevailing wages to all workers, even those who do not prove their immigration status, the Second District Court of Appeal has ruled.

In overturning a Los Angeles County Superior Court ruling in favor of Van Elk Ltd of Burbank, the appellate court says four workers can move ahead with their lawsuit against Van Elk for supposedly failing to pay them the prevailing wage for their work as welders on various projects.

While not being called illegal aliens, the four had refused to respond to questions regarding citizenship, legal residency status, documented worker status, and work visa information, according to the appeals court.

Immaterial, the three-judge appellate panel says.

"Allowing employers to hire undocumented workers and pay them less than the wage mandated by statute is a strong incentive for the employers to do so, which in turn encourages illegal immigration," the appeals court ruling says.

"HIRING UNDOCUMENTED WORKERS ENCOURAGES ILLEGAL IMMIGRATION"

"The fact an employer pays a worker less than the prevailing wage suggests the employer knew the worker was undocumented. Moreover, it is not the public which benefits from the savings. Employers are awarded public works contracts based on bids; bids which provide for the payment of prevailing wages," says the ruling. "When prevailing wages are not paid, it is the employer who pockets the difference just as if it had provided substandard materials to those promised in a contract."

Van Elk had argued that under federal law the workers did not have standing to sue because they were undocumented workers. The Superior Court agreed, saying the workers' refusal to answer questions about their legal status constituted admissions they were not authorized to obtain employment in the United States under the federal Immigration Reform and Control Act (IRCA) of 1986.

The appeals court says the IRCA does not preempt California's prevailing wage law as the prevailing wage law removes a major incentive to hiring undocumented workers. [PE]

Harassment Guidelines Enclosed!



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

Employer Has Duty to Defend

Q: "We have been asked to cover an employee's court costs for a law suit, is that

the law?"

A: Yes, state Labor Code §2802 requires employers "to indemnify employees for expenses or losses incurred in direct consequence of the discharge of their duties."

Los Angeles' Second District Court of Appeal recently ruled that law firm Morgan, Lewis & Bockius might be on the hook for as much as \$280,000 in legal fees incurred by one of its former lawyers in a malpractice suit filed by a miffed ex-client.

Ralph Cassady worked for the law firm, Morgan, Lewis & Bockius for only 13 months, but the court held that the law firm cannot ignore its duties to him as a former employee, even though Cassady represented angry client Rallie Rallis before and after he left the firm. The court, however, did limit the firm's obligation.

"The plain language of section 2802," Justice Richard Aldrich wrote, "makes clear that Morgan Lewis is responsible for indemnifying Cassady, if at all, only for those defense costs arising from aspects of Cassady's representation of Rallis undertaken during the period Cassady was employed by Morgan Lewis." In his complaint against the firm, Cassady estimated its obligation at about \$280,000.

According to the ruling, Rallis, an officer, director or shareholder in several corporations and business entities, had been a client of Cassady's for nearly 25 years. Nonetheless, in 1995 Rallis sued Cassady, Morgan, Lewis — which employed Cassady from Feb. 1, 1987, to March 4, 1988 — and other firms and attorneys associated with Cassady for alleged legal malpractice and professional negligence.

Specifically, Rallis accused Cassady of mishandling several negotiations and transactions between 1984 and 1993.

Morgan, Lewis retained an L.A. law firm to defend it against Rallis' claims, but chose not to provide a defense for Cassady, who had retained his own counsel.

In July 2002, however, Cassady sued Morgan, Lewis, seeking to enforce his rights under state labor laws and to have the firm indemnify him for the legal costs he piled up defending himself.

The Second District ruled that the fact Cassady had worked for more than one employer during his representation of Rallis "should not dilute his right to indemnity for costs incurred in direct consequence of the discharge of his duties at Morgan, Lewis." However, the court went on to say that Cassady bears the burden of proving which part of the fees and costs Morgan, Lewis should cover.

"Cassady, far better than Morgan, Lewis, knows what professional services he performed for Rallis during which time periods," Justice Aldrich wrote, "and has better access to the relevant evidence.

"Morgan, Lewis," he continued, "is especially unlikely to have ready access to information or evidence about what services Cassady performed for Rallis during periods when Cassady was not employed by Morgan, Lewis." [PE]

EMPLOYMENT SEMINARS

The Small Business Development Center and Pacific Employers will host the series at the Tulare-Kings Builders Exchange on the corner of Lover's Lane and Tulare Avenue in Visalia, CA. RSVP to Pacific Employers at 733-4256 or the SBDC, at 625-3051 or fax your confirmation to 625-3053. The mid-morning seminars include refreshments and handouts.

2007 Topic Schedule

◆ **Safety Programs** - Understanding Cal/OSHA's Written Safety Program.

Thursday, April 19th, 2007, 10am - 11:30am

◆ **Family Leave** - 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?

Thursday, May 17th, 2007, 10am - 11:30am

◆ **Wage & Hour and Exempt Status** - Overtime, wage considerations and exemptions.

Thursday, June 21st, 2007, 10am - 11:30am

◆ **Hiring & Maintaining "At-Will"** - From the thought to hire to putting to work, we discuss maintaining procedures that protect you from the "For-Cause" Trap!

Thursday, July 19th, 2007, 10am - 11:30am

◆ **Record Keeping** - Forms, Posters, Signs, Handouts, Fliers - Just what paperwork, posters, flyers and handouts does an Employer need?

Thursday, September 20th, 2007, 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 18th, 2007, 10am - 11:30am

◆ **Discipline & Termination** - The steps to take before termination. Managing a progressive correction, punishment and termination program.

Thursday, November 15th, 2007, 10am - 11:30am

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



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Riverside Prosecutors Charge Historic WC Fraud

The owners of a home-building company and two other people have been charged with 107 counts of defrauding insurance carriers and the state government of more than \$6 million, according to the Riverside County district attorney's office.

It is the largest case of workers' compensation fraud in county history, owners and operators of TF Ventures, All Service Inc. and Total Framing, Carter Lee Pendergrass, 56, and his son, Joshua, 25, both of Palm Springs, and Phillip Timothy Cassidy, 51, and his wife, Karen, also 51, both of San Bernardino, were arrested late last week. Bail is set at \$6 million for each person.

The defendants, it is claimed, underreported wages in 2003-05 to their workers' compensation insurance companies and to the EDD while also concealing claims histories to reduce workers' compensation insurance premiums and unemployment taxes, and intentionally misclassifying employees; for example, reporting \$11-an-hour employees who worked 40 hours as \$22-an-hour employees who worked 20 hours, Fick said.

Since insurance premiums are often lower for highly paid construction workers because insurance providers assume those employees are more experienced and less likely to be injured, the defendants were able to get better rates.

The defendants were also charged with money laundering. Prosecutors said they created a dummy company called McCollum Wood Products, which was used to pay employees under the table instead of to purchase materials. A receiver has been appointed to run the company. [PE]

FREE & UNLIMITED CONSULTATION?

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

Overtime No Bane

Although working very long hours is linked to an increased risk of certain types of health and safety problems for some industrial workers, other factors such as previous health problems may have a more significant impact. That's the chief finding of a study reported in the February Journal of Occupational and Environmental Medicine.

Results challenged the assumption that each hour of work above 40 steadily increases risks and reduces productivity. In fact, no adverse effects were found until the 60-hour mark.

Even then, say Dr. Harris M. Allen and his colleagues, the effects were limited to an increased risk of workers' compensation cases for hourly female employees with a history of comp cases and a higher risk of new musculoskeletal diagnoses for older workers.

Prior diseases and health status appeared to have a much stronger impact on safety and health than the number of overtime hours worked. [PE]