

### TOP OF THE NEWS

#### Conservative Foes Nix Immigration Bill

**S**upported by President Bush and influential members of both parties, the immigration overhaul bill never really did get any real respect. Even its strongest supporters viewed it as good enough but far from ideal.

The fence sitting bill ultimately lost out to the loud and consistent argument by the President's Conservative base that the measure amounted to amnesty for lawbreakers - an angry outcry amplified and fed by talk radio and TV hosts and bloggers.

*"The bill was defeated by an anti-immigrant revolt that intimidated Republican lawmakers, and they folded. They wilted under the pressure,"* said Frank Sharry, executive director of the National Immigration Forum, one of several liberal groups that backed the measure despite misgivings about some of its key elements.

The bill that recently died in the Senate included the top priorities of the left and right, offering lawful status to as many as 12 million illegal immigrants living in the U.S. while fortifying the border and workplaces against future illegal arrivals.

Major labor unions were against the temporary worker program that they feared would flood workplaces with cheap foreign labor.

Immigrant-heavy service-worker unions that backed the deal were upset that it gave guest workers no guarantee of being able to stay in the U.S. permanently.

The bill's new point system to base future immigration on employment criteria instead of family ties sparked opposition from liberal groups who said it was inhumane, and big corporations who worried it would hamper their efforts to recruit the best workers.

Republicans were fundamentally uncomfortable with giving people who came to the U.S. illegally a chance to gain lawful status, while many Democrats felt the hurdles those immigrants would face - from steep fines and long waits to trips home - were unworkable and unfair.

*"... as many as 12 million illegal immigrants ..."*

Brent Wilkes of the League of United Latin American Citizens, one of several immigrant advocacy groups that opposed the bill as overly punitive, said those concerns made it difficult to compete against "a certain segment of the population building themselves up into an anti-immigrant hysteria."

"It's hard to get people to rally for something they actually think is a bad deal," Wilkes said. [PE]

### Federal Minimum Wage Poster Enclosed!

#### President's Report

~Dave Miller~

#### Misnamed Free Choice Act

**O**n March 29, 2007, Senator Edward M. Kennedy introduced the **Employee Free Choice Act**, identical legislation to that passed on March 1 by a vote of 241-185 in the U. S. House of Representatives.

Vigorously opposed by employers and their representatives, EFCA (H.R. 800; S. 1041) would have amended the National Labor Relations Act to: (i) require employers to recognize unions based on card checks; (ii) impose mandatory mediation and arbitration in first contract negotiations; and (iii) substantially increase penalties imposed on employers for labor law violations during organizing campaigns and first contract efforts.

The Senate bill was brought to the floor during the week of June 18th, where it enjoyed majority support. However, forces opposing the bill threatened a filibuster which would prevent a vote from being taken. A filibuster can be defeated by a vote of 60 senators to invoke "cloture"—which would end debate on the subject and bring the



bill to the floor for a vote. On Tuesday, June 26th the Senate voted 51-48 in favor of cloture, not enough to end the filibuster. Thus, the Employee Free Choice Act cannot pass the Senate in 2007.

Observers indicate the bill will likely make a comeback. [PE]

#### Fewer Heat Deaths

**H**eat-caused deaths among California workers were down in 2006 compared to the year before, according to a report released this week by the University of California. Despite last summer's heat wave, deaths due to heat stress in the workplace were lower than the previous year, according to recent findings from the California Occupational Safety and Health Administration. [PE]

#### Hiring Mistakes

**H**alf of the new employees hired by U.S. companies performed below average or turned out to be a hiring mistake, according to a recent survey of chief executive officers. Thirty-two percent of the over 400 CEOs surveyed report that up to 50 percent of their new employees haven't been meeting expectations over the past two years. [PE]

Intelligence is the ability to adapt to change. — Stephen Hawking

## Labor News

### Cabinetmaker Fined by EPA

**Barbosa Cabinets Inc. of Tracy** has settled federal charges of improperly storing, labeling, handling and disposing of hazardous waste materials by paying the U.S. Environmental Protection Agency a \$32,200 fine.

"Every facility that creates hazardous waste is required to train its employees, implement an emergency contingency plan and properly categorize, label and dispose of hazardous waste generated," says Steven Barhite, acting Waste Management Division director for the EPA's Pacific Southwest region.

During a routine inspection in May 2006, EPA officials found that Barbosa Cabinets was not handling rags containing waste acetone as hazardous waste -- a violation that caused hazardous waste to be treated as municipal waste, the agency says. Municipal landfills are not equipped to handle these types of materials.

*"... WAS NOT HANDLING RAGS . . . AS HAZARDOUS WASTE . . ."*

In addition, EPA inspectors found the facility did not have a hazardous waste training program, a complete contingency plan in the event of an emergency, and did not file a biennial report, one of the EPA's primary tools for tracking generation, shipment, and receipt of hazardous waste.

Barbosa Cabinets makes and finishes kitchen cabinetry. The hazardous waste is generated from solvent-based finishes and acetone used to clean equipment used to apply finishes to cabinetry. [PE]

### Fines for Repeat Violations

**OSHA has cited Williamsport Steel Container Co. Inc.** of Williamsport, Pennsylvania, for alleged safety and health violations and is proposing \$43,000 in penalties. The company, which has 38 employees, manufactures steel drums used for the storage of flammable, combustible, and corrosive liquids or hazardous waste.

*"THE COMPANY WAS ISSUED THREE REPEAT VIOLATIONS . . ."*

OSHA initiated its investigation on March 6 as a follow-up to a previous inspection. The company has 15 working days from receipt of the citations to appeal them before the independent Occupational Safety and Health Review Commission.

The company was issued three repeat violations for machine guarding hazards and improper storage of flammable and combustible liquids, with a total proposed penalty of \$28,000; and three serious violations for machine

guarding, emergency egress, and electrical hazards, with a total proposed penalty of \$15,000. [PE]

### EEOC Accuses Toys 'R' Us

**The federal government sued Toys "R" Us** with illegally bypassing a Hispanic employee in favor of less-qualified individuals for entry-level management positions.

In a suit filed in federal district court in Seattle, the U.S. Equal Employment Opportunity Commission also accused a Toys "R" Us supervisor with subjecting the employee to "repeated slurs and derogatory comments regarding his Mexican national origin." A Toys "R" Us spokesman said the company does not comment on pending litigation

*"OH, THAT'S JUST THE COLOR OF YOUR SKIN."*

The government alleges that the supervisor frequently referred to Gregorio Martinez, a sales associate at its Puyallup, Wash. store, as "rubbish."

The supervisor also allegedly told Martinez that he looked dirty and should wash his face, then added, "Oh, that's just the color of your skin."

When Martinez reported the harassment, management retaliated against him and ultimately fired him, the suit said.

"No one should ever have to put up with the racist remarks and discrimination that Martinez was subjected to at work," said EEOC attorney William Tamayo. "To make things worse, Toys "R" Us showed him the door after he complained." [PE]

### All Complaints Not SOX Protected

**In a surprising turn of events,** the Arbitration Review Board reversed the 2004 decision of an administrative law judge, and dismissed the complaint of the first individual to bring an initially successful whistleblower claim under the Sarbanes-Oxley Act (SOX).

In doing so, the ARB rejected a broad definition of protected activity, including, significantly, the claim that an alleged violation of generally accepted accounting practice standards constituted a violation of the laws protected by SOX. Thus, this decision provides employers with a significant victory and the courts with much needed guidance in determining what constitutes protected activity. [PE]

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***Federal Minimum Wage Poster Enclosed!***



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

#### Wellness Programs

**Q:** "May we set up a 'Wellness Program' that rewards employees for healthful lifestyles?"

**A:** The law most involved is the **Health Insurance Portability and Accountability Act (HIPAA)** and HIPAA says yes. The law contains an important exception allowing you to institute a wellness program. However, to prevent employers from practicing "back door discrimination," the plan must meet certain requirements. It is these requirements that have been updated.

#### Programs That Depend on Health Outcome

There are two sets of criteria to meet to utilize the wellness program exception. The first are involved if your program rewards participants for reaching a desired health outcome ... giving up smoking or losing weight, for example, or carrying out a specified exercise regime. If an outcome is required, you must:

- *Limit the reward to no more than 20 % of the cost of individual health coverage at your firm (even if the employee has a family plan).*
- *Design the program to promote health and prevent disease.*
- *Let people qualify for the program at least once a year.*
- *Make the reward available to all similarly situated individuals, and provide alternative ways to earn it for, say, individuals with disabilities. (One example: If the program requires a daily walk, people in wheelchairs could qualify by also following the route.)*
- *Suggest reasonable alternatives in all program materials.*

#### Programs That Don't Depend on Health Outcome

The second form of permitted wellness program has no requirement that a health outcome be met. These are the kinds of rewards permitted for this type of program:

- *Reimbursement of part or all the costs of joining a fitness center.*
- *Diagnostic testing that offers a reward for taking the test, with that reward received regardless of test results.*
- *Waiver of deductibles or copays for preventive care. The examples given are prenatal or well-baby visits for new mothers.*
- *Reimbursement of a quit smoking program, regardless of whether the smoker quits or not.*
- *A reward for attending a monthly health education seminar.*

Either program will likely be a benefit as success at almost any level should lower health-related costs, and a healthier work force is typically more productive and has better attendance. [DE]

## 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.

### Sexual Harassment Prevention Training

California Assembly Bill 1825 (AB 1825) requires employers with 50 or more employees to provide all personnel who have "Supervisory Authority" a minimum of two hours of Sexual Harassment Prevention Training every two years. Training must include strategies for prevention and discuss remedies for victims of unlawful harassment.

On Wednesday, October 17th, 7:30am registration & breakfast with program 8:00am thru 10:00am, at the Lamp Liter Inn in Visalia, the Visalia Chamber of Commerce, in cooperation with Pacific Employers, will present the state mandated Supervisors, Sexual Harassment Prevention Training Seminar & Workshop with full breakfast.

Call the Chamber at 734-5876 for reservations \$25 for Pacific Employers and Chamber members.

### 2007 Topic Schedule

#### There is No Seminar in August

◆ **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*

#### There is No Seminar in December

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



### Dinner for 2 at the *Vintage Press*?

**That's right!** When a business that you recommend joins Pacific Employers, we treat you to an unlimited dinner for two at the *Vintage Press*. Phone us at 733-4256 or Toll Free 800 331-2592.

Pacific Employers  
306 North Willis Street  
Visalia, CA 93291  
559 733-4256  
(800) 331-2592  
www.pacificemployers.com  
email - peinfo@pacificemployers.com

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### Unsafe Driving Practice

**T**he American Trucking Association (ATA) is urging drivers to avoid the dangerous practice of tailgating heavy trucks in an effort to increase fuel economy. The industry trade group is also advising fleet safety directors to warn their drivers and owners-operators about the resurgence of this dangerous practice.

Known as “drafting,” it involves driving a car very close behind a truck to use the reduction of wind resistance to lessen the amount of energy needed to propel the vehicle.

“Few driving behaviors are more dangerous on our highways than drafting,” said ATA President and CEO Bill Graves.

He explains that drivers who do this are beyond the field of vision of the truck driver and are unable to see around the truck. “Drafting is unsafe, illegal, and significantly increases the chances of injury and death. This practice compromises the safety of everyone on the nation’s highways and must not be considered a viable means of extending fuel mileage,” Graves added. [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.

### Tips for Safe Use of PDAs

**I**n order to stay connected to work 24/7, many people use personal digital assistants or PDA’s. Using these devices over a long period of time can lead to repetitive motion injuries which occurs when gripping the PDA on the palm of the hand between the four fingers and the fatty pad below the thumb, and using the thumb of the same hand to type on the tiny keypad. This can aggravate arthritis and lead to tendonitis of the thumb and other ailments.

The American Physical Therapy Association offers the following tips for preventing injury:

- Take frequent breaks from your PDA. Don’t type for more than a few minutes at a time.
- Write fewer and shorter messages. Abbreviate your responses.
- Avoid using the thumb for typing; use the fingers of the other hand instead.
- Stretch the fingers periodically, holding the stretch for 10 seconds, then repeating it 8 times. [PE]

### Big People at Risk

**A** new study has shown that Americans have outgrown the current standard for protective harnesses, and 1 million workers who need fall protection on the job may be in danger of using inadequate equipment. The National Institute of Occupational Safety and Health (NIOSH) and manufacturers are contemplating an adjustment in standards so that harnesses can handle more body weight. [PE]