

### TOP OF THE NEWS

#### New Laws Target Contractors

##### WORKERS COMPENSATION (AB 881)

**Workers compensation will be mandatory for those classified as "C-39 roofers."** Other licensees can still get by without it, if they do not have employees.

Most roofers need workers to do the job.

The new law was prompted after it was shown that a significant number of contractors were not reporting that they had workers, thus not having to pay for workers' comp insurance, giving them an economic advantage over those companies that complied with the law, the Contractors State Licensing Board says.

Other new laws affecting contractors include:

##### ELECTRICIANS CERTIFICATION (LC §3099.2)

Electricians must have secured a 3 year certification by the 1-1-07 deadline in order to continue working in California without one-on-one supervision. The law, at Labor Code Section 3099.2 and at 8 California Code of Regulations Section 290.0, requires certification "for those persons who perform work as electricians for contractors licensed as Class C-10 electrical contractors under the Contractors' State License Board Rules and Regulations."

##### CONTRACTORS WITH REVOKED LICENSES (AB 2897)

**Contractors who try to operate with someone else's license number** are the targets of a new state law.

The law makes it a criminal charge for anyone involved with a revoked license (member, officer, director, owner, or partner) to knowingly let the revoked person act as a contractor or hire revoked licensees as anything other than a non-supervising employee.

"Some individuals have tried to get around a revoked license by operating with another license taken out by friends or family members," says Contractors State License Board Registrar Steve Sands. "This breaks the cycle of illegal operation."

One example is a contractor from the San Diego area who had his license revoked, was later caught using his wife's license number and then his father's license number to continue to contract and harm consumers.

The contractor in July 2006 pleaded no contest to contracting without a license and was sentenced to three years summary probation and a \$1,200 fine. However under the new law, a violation of this section is now a misdemeanor punishable by a fine of not less than \$4,500, by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment.

##### BOND AMOUNT INCREASES

**The amount for a contractor bond goes up from \$10,000 to \$12,500.** This is the bond that all licensed contractors are required to have in California. It is money that homeowners, employees or others hurt by a licensee can file against for restitution. [PE]

### Labor Law Update Enclosed!

#### President's Report

~Dave Miller~

#### Good Practices for 2007



**A**t the beginning of the year, Pacific Employers reviews the changes in labor law.

The legislature, courts and administrative agencies of our government are usually busy all year telling employers how to run their businesses. The enclosures contained in this edition of the

*Management Advisor* review the subjects of change.

Below we provide a list of Good Practices for the coming year:

- **Minimum Wage Increase** — This increase, from an hourly \$6.75 to \$7.50 also changes the exempt salary monthly minimum from \$2,340 to \$2,600 or from \$28,080 to \$31,200 annually during 2007. Other rates based on the minimum wage also change.
- **Take Sex Harassment Rules Seriously** — Major court decisions and new law (AB 1825) have created substantially greater complexity to sex harassment rules, it is not to be messed with.
- **Review "Salary-exempt" Positions** — Overtime penalties are substantial for misclassified personnel.

- **Employee Clockouts For Meal Periods** — With little hope for reform, protect yourself with proof of meal periods.
- **Get On-duty Meal Agreements Signed** — If employees must work at meals, get agreements signed.
- **Review Pre- & Post-Duty Responsibilities** — Putting on uniforms, and washing up, may be working time.
- **Consider Everyone As A Protected Class Employee** — Everyone is a victim, begin from that premise.
- **Learn The "Interactive Process"** — Always get more information on how you can accommodate.
- **Bring Handbooks Up To Date** — The laws change, your policies need to change with the law.
- **Create/Review Sales Commission Contracts** — You're the author, so poor language will be construed against you, make sure they protect you. [PE]

He who would be a leader must be a bridge. — Welsh proverb

## Hiring Illegal Aliens

**US** Immigration and Customs Enforcement (“ICE”) continues to seek criminal sanctions in addition to civil penalties for employers who knowingly hire individuals not authorized to work in the United States. Recent worksite raids at six Swift & Company meatpacking plants, following other high-profile raids on the Company earlier this year, illustrates the difficulty facing employers of large numbers of immigrants. Federal agents apprehended an estimated 1,282 individuals who are suspected of being here illegally and purchasing false documents or stolen identity documents of lawful US citizens in order to obtain employment. The Company has denied any knowledge of the employees’ alleged illegal activity. It points out, further, that it participates in the BASIC Pilot Program, administered by US Citizenship and Immigration Services, which helps employers comply with regulations for hiring persons authorized to work in this country.

Several days after the worksite raids, eighteen former employees who had been working lawfully alleged that the company conspired to “manipulate and depress the labor market and wages by hiring illegal immigrants” in violation of the Racketeer Influences and Corrupt Organizations Act (“RICO”). The former employees also accused the company of transporting, smuggling, harboring and concealing illegal immigrants. The suit alleges the company knowingly sought out and hired individuals who were not authorized to work in the USA and as a result depressed the wages for those who are able to work lawfully in the United States.

As a result of a worksite raid at another employer, followed by a multi-year and multi-agency investigation, federal charges of hiring unauthorized aliens recently resulted in the President and Vice President of a California company pleading guilty to illegal hiring practices and the company forfeiting \$4.7 million in profits. Each executive has agreed to pay a fine of \$200,000 and \$100,000, respectively. The charges leading to the plea agreements are the result of a multi-year investigation with the cooperation of ICE, the U.S. Border Patrol, the Social Security Administration and the Naval Criminal Investigative Service. At sentencing, the executives face a maximum sentence of five years in prison, a \$250,000 fine, and three years of supervised release.

These developments, which are fraught with potential liability and adverse publicity, counsel employers to implement policies complying with employment-related immigration rules. All employers should ensure that they have conducted a vulnerability analysis to determine any potential issues as part of their due diligence review.

Employers seeking guidance in reviewing or establishing policies and procedures to conform with immigration law requirements are invited to contact the Pacific Employers’ staff. [PE]

## New Seminar Location!

**T**he Small Business Development Center and Pacific Employers will host our perennial Labor and Safety Seminar Series at the new home of the Tulare-Kings Builders Exchange on the Southwest corner of Lover’s Lane and Tulare Avenue in Visalia.

As always, these morning seminars are free of charge and include refreshments and handouts. We hold the series monthly on the third Thursday of the month except in August and December. You may RSVP to Pacific Employers at 733-4256 or the SBDC, at 625-3051 or fax your confirmation to 625-3053. See page three for this year’s schedule. [PE]

### WOMAN GETS \$115,000 IN RELIGION BIAS LAWSUIT

**A** federal jury has ordered a Huntsville medical practice to pay \$115,000 to a former employee who claims that she was fired for refusing to discuss her feelings about God.

Carolyn S. Hall, 48, of Paint Rock sued Alabama Pain Center for religious discrimination under the federal Civil Rights Act in January. The trial was held in federal court.

Hall claims that Dr. Dean Willis, the clinic’s owner, told her in late 2003 that he was concerned about her job performance because he did not know where she stood with God. Hall declined to talk with Willis about her religious views and was fired as office manager several weeks later, she testified.

“The jury obviously agreed with our position that one’s religious views are personal,” Hall’s attorney, John D. Saxon, said. “No employer should impose his or her religious views on an employee.”

Jurors deliberated for about two hours and awarded \$15,000 in damages for mental anguish and \$100,000 in punitive damages.

### WORKER AT MEDICAL OFFICE CITED PRESSURE TO TALK ABOUT GOD

U.S. District Judge Lynwood Smith could also order Alabama Pain Center to pay Hall’s attorney fees.

Because Congress capped jury awards in civil rights lawsuits, Saxon said, the clinic will probably be able to get the damages reduced to \$50,000.

Alabama Pain Center attorney Phillip Scott Arnston said that he does not discuss ongoing cases. However, he did say the clinic is considering an appeal.

In court filings, Arnston argued that Hall was terminated for poor job performance.

Hall was hired by the clinic as an insurance specialist in July 2002 but was quickly promoted to insurance supervisor and then office manager, Saxon said. At the time of her firing in February 2004, she was making about \$37,000 a year, he said.

In her complaint, Hall said Willis led a daily prayer meeting for employees at the Whitesport Drive medical office. She said the sessions, which lasted up to an hour, were held in a small chapel with stained-glass windows that is part of the business.

Hall said she felt that Willis expected her to attend the prayer meetings. The lawsuit says she went occasionally in an effort to “appease” the doctor.

Saxon said Hall believes in God and attends church. But he said she felt uncomfortable talking with Willis about her religious preferences.

“She just thought it was personal,” Saxon said. [PE]

*Labor Law Update Enclosed!*



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

#### FLU IS SERIOUS!

**Q:** "Does FMLA Cover the Flu?"

**A:** The Bureaucrat's Answer, "No" ... with a "Sometimes" Initially, the U.S. Department of Labor (DOL) said "No" to flu victims receiving FMLA leave, stating in its regulations that the flu was one of the minor illnesses that ordinarily don't meet the law's definition of a "serious health condition."

Later, however, DOL "clarified" its stance. In two opinion letters (DOL Opinion No. 86 and No. 87, both dated December 12, 1996), the agency stated that illnesses like the flu could be covered by the FMLA if they met the criteria for a serious health condition, on a case-by-case basis.

In DOL's second opinion letter, besides repeating the same assertion, the rule makers added an example: "If an individual with the flu is incapacitated for more than 3 consecutive calendar days and receives continuing treatment, e.g., a visit to a healthcare provider followed by a regimen of care such as prescription drugs, the individual has a qualifying 'serious health condition' for purposes of FMLA."

The Family and Medical Leave Act (FMLA) is intended to apply to situations where an employee has a serious health condition. The flu is certainly no fun to have, but does it justify an FMLA claim?

According to the U.S. Centers for Disease Control and Prevention (CDC), flu season can last all the way to April. By then, the CDC estimates that 10 percent to 20 percent of U.S. residents will have gotten the flu. What does that likely mean for you? Get ready for a lot of employee absences.

#### The Courts Agree: Flu can be covered by FMLA

At least two federal appeals courts have weighed in on this issue, both finding that the flu and other viral illnesses could be protected under FMLA. In the case of *Miller v. AT&T Corp.*, the 4th Circuit (covering Maryland, North Carolina, South Carolina, Virginia, and West Virginia) held that as long as FMLA's definition of a serious health condition is met, the flu could qualify for coverage (250 F.3d 820).

Similarly, in *Rankin v. Seagate Tech., Inc.*, the 8th Circuit (covering North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Missouri, and Arkansas) held that a viral infection that met the statutory requirements was an FMLA qualifying illness (246 F.3d 1145).

So where does that leave you, the employer? Likely with a case-by-case situation, in which you'll need to investigate just how much each employee claiming FMLA leave has satisfied the requirements to get it. Was the worker (or his or her family member needing the worker's care) down with the illness more than 3 days? Was there a visit to a healthcare provider? Was there a follow-up regimen?

Or take this alternative: Consider what could happen to your well workforce if an employee still harboring the bug returns to work prematurely-or tries to stay at work even if ill? You could be dealing the flu on a "cases-by-cases" basis. [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

◆ **Employee Policy Review** - Every employer needs guidelines and rules. We discuss planning considerations, what rules to establish and what to omit.

*Thursday, February 15th, 2007, 10am - 11:30am*

◆ **Equal Employment Fundamentals** - Harassment & Discrimination in the Workplace - The seven (7) requirements that must be met by all employers.

*Thursday, March 15th, 2007, 10am - 11:30am*

◆ **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.



### 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.

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**Labor Law Update Enclosed!**

**Pacific Employers**  
MANAGEMENT ADVISOR

Celebrating 43 Years!

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### Prosecutor Wins Suit over Office Racial Bias

The U.S. Justice Department has been ordered to reinstate a Huntsville woman to her former job as a federal prosecutor nearly five years after she alleged racial and sexual discrimination.

In its ruling favoring Assistant U.S. Attorney Deirdra Brown-Fleming, the Equal Employment Opportunity Commission also ordered the reinstatement of Brown-Fleming's former supervisor, Victor Conrad, who claimed he was demoted for reporting the situation to his superiors and supporting Brown-Fleming.

In addition to reinstatement, Brown-Fleming is to receive back pay. The EEOC ruled in December that U.S. Attorney Alice Martin fired Brown-Fleming in 2002 as a reprisal for filing a racial discrimination complaint. The EEOC ordered compensation that will likely total more than \$4.4 million in taxpayers' money, Brown-Fleming said.

Brown-Fleming filed the complaint with EEOC in 2002. Hired in 1998, she was the first black woman to serve as a federal prosecutor in the Huntsville branch of the U.S. Attorney's Office. Brown-Fleming alleged a paralegal sabotaged her court briefs in 1998 and that the same paralegal, several office staff members and some federal law enforcement agents referred to Brown-Fleming using a racially derogatory term.

An administrative assistant stated that the racially derogatory term became Brown-Fleming's office nickname. [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.

### Electrical Workers Local Must Pay Fines And Fees for Contempt of Appeals Court Orders

One of the nation's largest local construction trades unions has been slapped with fines and fees exceeding \$300,000 for its contemptuous behavior in violating the federal labor law's prohibition on "secondary boycotts." The U.S. Court of Appeals for the Second Circuit directed that Local Union No. 3, International Brotherhood of Electrical Workers AFL-CIO, pay fines of \$33,250, as well as the National Labor Relations Board's attorneys fees and the fees of a special master appointed by the Court to hear the case initially, amounting to more than \$280,000, for violating prior Court orders against Local 3's illegal picketing and demonstrations. *NLRB v. Local 3, International Bhd. of Electrical Workers*

The case arose after Local 3 engaged in secondary picketing and related activities at JFK International Airport and at the Empire State Building, seeking to oust Association contractors who did not have collective bargaining agreements with Local 3 from construction jobs, by picketing general contractors and project owners on whose sites they were working. When the NLRB attorneys found merit to the charges, at the urging of counsel for the contractors, the NLRB sought contempt sanctions against the Union for violating earlier Court of Appeals decrees banning such unlawful activities.

In addition to upholding the contempt finding, the Second Circuit hiked the sanctions proposed by the Special Master for future violations. The Court increased the penalty for discrete violations from \$5,000 to \$25,000, and raised the penalty for continuing violations by the Union from \$250 per day to \$5,000 per day. [PE]