



## WHAT'S NEWS!

### Care Facility Meal Agreements

**In December 2015, the California Court of Appeal for the 5th Appellate District addressed the issue of on-duty meal period "waivers" as it relates to direct-care staff of 24 hour per day residential care homes.**

Care Homes required employees who provided direct care to clients work on-duty meal periods to protect the clients from illness, injury, fire, and other emergencies. At hire, these employees were told they would be required to eat lunch with the clients, would be given a free meal (the same food provided to the residents), and would be paid for time spent working during their lunch period.

An employee of Care Homes was given notice that on duty meal periods were required, but not given notice (as required by another statute) that she could revoke the on-duty meal period agreement at any time.

The employee filed a lawsuit alleging she didn't receive off-duty meal periods or rest breaks. She also sought to represent a class of over 100 current or former employees of Care Homes for the same alleged violations.

#### Court says no obligation

The court analyzed Sections 11(A) and 11(E) of Wage Order 5, which relates to an employer's duty to provide meal periods. Section 11(A) states the general rule that an employer must provide certain nonexempt employees uninterrupted duty-free meal periods unless:

1. The employer and employee have a written agreement regarding the on-duty meal period that can be revoked by the employee in writing at any time; and
2. The nature of the work prevents the employee from being relieved of all duties.

By contrast, as the court found, Section 11(E) is a specific provision applicable to 24-hour residential care facilities that allows employers to "require" employees to work on-duty meal periods, provided certain conditions are met:

1. The on-duty meal period is necessary to meet regulatory or approved program standards;
2. The employee eats with residents during their meals; and,
3. The employer provides the same meal to the employee at no charge.

The court noted that the word "require" under Section 11(E) would be rendered meaningless if employees could revoke the on-duty meal agreement at any time. In sum, Section 11(E) doesn't include a provision allowing employees to revoke the on-duty meal agreement. Thus, the court of appeal concluded that Care Homes wasn't obligated to inform its employees that they might have had the right to revoke the meal period agreement.

This decision is good news for the 24-hour residential care industry. This case also functions as a reminder to review your meal period and rest break policies and procedures and ensure on-duty meal agreements and meal period waivers are legally compliant and in writing. [PE]

## Labor Law Update Enclosed!

### President's Report ~Dave Miller~

#### CA's Minimum Wage \$10

**As of January 1<sup>st</sup>, California's minimum wage increased to \$10 per hour.** That's a dollar higher than the 2015 minimum.

This increase in the minimum wage is California's second increase in 18 months.

#### White Collar Exemption:

One requirement for California's "white collar" overtime exemptions (executive, administrative, or professional) to apply is that the employee receive a monthly salary no less than two times the California minimum wage for full-time employment (40 hours per week). The new current minimum monthly salary \$3,467 or \$41,600 annually as of January 1, 2016.

#### Wage Orders

California law requires employers to post information on wages, hours and working conditions at a worksite area accessible to employees. Notices for the wage orders in English and Spanish can be downloaded and printed from the Workplace postings page on the DIR website.

Almost all employees in California must be paid the minimum wage as required by state law. Salaried exempt workers pay is based on the formula of two times the minimum wage. [PE]



#### IRS EXTENDS ACA REPORTING DEADLINES

**In December, the IRS extended the ACA reporting deadlines for 2015 as follows:**

(1) The due date for employers to provide the 2015 Form 1095-B, Health Coverage, and the 2015 Form 1095-C, Employer-Provided Health Insurance Offer and Coverage to employees is extended from February 1, 2016, to March 31, 2016.

(2) The due date for employers to file with the IRS the 2015 Form 1094-B, Transmittal of Health Coverage Information Returns; the 2015 Form 1095-B, Health Coverage; the 2015 Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns; and the 2015 Form 1095-C, Employer-Provided Health Insurance Offer and Coverage is extended from February 29, 2016, to May 31, 2016 (if not filing electronically), and from March 31, 2016, to June 30, 2016 (if filing electronically).

All applicable large employers (*employers with 50 or more full-time and full-time equivalent employees*) and employers sponsoring self-funded plans, must comply with the ACA's applicable reporting requirements. [PE]

"The worst thing that can happen to a good cause is not to be skillfully attacked, but to be ineptly defended." -- Frederic Bastiat (1801-1850) French economist,

## Recent Developments

### LETf Looks For Companies Paying Their Employees Under The Table

**C**alifornia's Labor Enforcement Task Force (LETf), a coalition of government enforcement agencies under the direction of the Department of Industrial Relations (DIR), was created in 2012 to combat the underground economy. Businesses operating in an "underground economy" may hire employees off the books and pay them under the table, not withhold and remit state disability insurance contributions, fail to protect workers as required by workplace health and safety regulations and not carry adequate workers' compensation insurance coverage, among other unlawful activities.

"... HAVE AN UNFAIR ADVANTAGE OVER LAW-ABIDING BUSINESSES."

Not only do businesses in the underground economy harm workers, but they also have an unfair advantage over law-abiding businesses. According to the DIR, the LETf was created to ensure safe working conditions and proper payment of wages for workers, create an environment where legitimate businesses can thrive and support the collection of all California taxes, fees and penalties due from employers.

The LETf also continues to target specified industries where it has found frequent violations and where there are often many low wage workers. These industries include:

- Agriculture
- Automotive
- Car Wash
- Construction
- Garment
- Manufacturing
- Restaurants

Last year the LETf issued nearly \$8 million in initial assessments, an increase of more than \$2 million over the same period in 2014.

The LETf coalition includes: the Labor & Workforce Development Agency; Cal/OSHA; the Labor Commissioner's Office; the Employment Development Department; the Contractors State License Board; the California Department of Insurance; the Board of Equalization; the Bureau of Automotive Repair; Alcoholic Beverage Control; the State Attorney General; and district attorneys throughout California. [PE]

### DOL Substance Abuse Testing Changes

**L**ook Out For Trucks! The mandatory random substance abuse testing of truck drivers was cut in half on the first of the year.

The U.S. Federal Motor Carrier Safety Administration of the Department of Transportation is reducing by half the minimum percentage of drivers who must be randomly tested for controlled substances.

Previously, employers were required to test at least 50 percent of their average number of commercial motor vehicle drivers with commercial drivers' licenses. The required percentage for 2016 is now only 25 percent. [PE]

### Visalia Motel Owner To Pay \$30,000

**E**ight employees from a Visalia motel will get more than \$30,000 in back wages and liquidated damages, the U.S. Department of Labor announced in December.

In a statement, the Department of Labor said Visalia's Motel 6, on West Noble Avenue, west of Linwood Street, didn't pay minimum wage, overtime and failed to comply with recordkeeping provisions of the Fair Labor Standards Act.

"COME BACK NEXT YEAR," SHE SAID. . . "

According to Visalia city records, Bhole Shiv Inc. is listed as the motel's owner. They couldn't be reached for comment. A front desk clerk said neither a supervisor nor an owner was available. "Come back next year," she said.

The motel also misclassified the maintenance worker as an independent contractor, paying him less than the federal minimum wage, the Department of Labor said.

Assistant District Director Nora Pedraza said the labor violation occurred over a three year period between October 2012 and October 2015. Pedraza, who's based in Fresno, said the violations were occurring concurrently.

Pedraza said motel owners were not aware they were in violation of the overtime rule and didn't know to treat the maintenance worker as an employee. According to the Labor Department, the misclassification of employees is a serious problem.

Misclassified employees are denied access to critical benefits and protections, including family and medical leave, overtime, minimum wage and unemployment insurance.

Pedraza said the motel owners came into compliance when they agreed to pay the back wages and liquidated damages totaling \$30,854. All money was to be given to the employees. Pedraza said she didn't know if the employees affected were still working at the motel. She also said federal law prohibits termination or retaliation for employees who cooperate with a Labor Department investigation.

The motel owners will not face criminal charges, Pedraza said. However, the motel may be subject to a Department of Labor investigation at any time. [PE]

### Sexual Harassment Prevention Training

**T**he Visalia Chamber of Commerce and Pacific Employers, will host a state mandated Supervisors' Sexual Harassment Prevention Training Seminar & Workshop with a continental breakfast on April 27<sup>th</sup>, registration at 7:30 am, Seminar 8:00-10:00 am, at the Lamp Liter Inn, Visalia.

RSVP Visalia Chamber - 734-5876

PE & Chamber Members \$35 - Non-members \$50

Certificate - Forms - Guides - Full Breakfast

Future 2016 Training dates:

July 27<sup>th</sup>, & Oct. 26<sup>th</sup>



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

#### CA's Fair Pay Act

**Q:** "We are a small employer with less than 25 employees. Does the Fair Pay Law, which mandates wage parity for men and women doing 'substantially similar' work apply to our business?"

**A:** The Gender Equity Pay Act, SB 358, called the "Fair Pay Act," revises Labor Code section 1197.5, which deals with gender pay inequality or disparity.

Gov. Jerry Brown signed the Fair Pay Act into law in October, expanding a 1963 federal regulation prohibiting companies from paying men and women differently for equal work. The "similar work" provision is important, legal experts say, because the "equal work" rule was very narrow, allowing employers to use any differences in job responsibilities as a rationale for pay disparities.

The law applies to all workers in California, regardless of their employer's size or where it is based.

Under existing California law, employers cannot pay an employee less than the rate paid to an opposite-sex employee in the same establishment for equal work on jobs that require equal skill, effort and responsibility, and could face a lawsuit for such disparity.

The law makes it easier for workers to challenge the fairness of their pay and also nudges employers to fix pay issues before complaints arise. Those who violate the law could be on the hook for back wages and interest, plus an equal amount in additional damages. According to data cited in the legislation, women in California earn an average 84 cents for every dollar earned by men.

The new law bars employers from punishing workers who discuss salaries with colleagues. That's a potentially significant restriction, since it could spur more workers to talk about and challenge pay disparities internally before pursuing complaints or litigation.

Assessing pay is difficult since most HR systems don't capture all the information needed to group similar jobs. In addition, they typically lack enough data on individual workers to understand whether legitimate factors—such as seniority, experience, or education—account for differences in pay.

The law shifts the burden of proof onto employers, rather than individual workers, so companies will have to prove they pay equitably if an employee brings a complaint. The California Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement, will oversee compliance.

The law may encourage employers to standardize the way they set pay, instead of deciding it, as many companies do, on a case-by-case basis. [PE]

## No-Cost Employment Seminars

Pacific Employers hosts this Seminar Series at the Builders Exchange at 1223 S. Lovers Lane at Tulare Avenue, Visalia, CA. RSVP to Pacific Employers at 733-4256. These mid-morning seminars include refreshments and handouts.

### 2016 Seminars

◆ **Employee Policies** - Every employer needs guidelines and rules. We examine planning considerations, what rules to establish and what to omit.

**Thursday, February 18<sup>th</sup>, 2016, 10 - 11:30am**

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

**Thursday, March 17<sup>th</sup>, 2016, 10 - 11:30am**

◆ **Safety Programs** - Understanding Cal/OSHA's Written Safety Program. Reviewing the IIPP or SB 198 requirements for your business.

**Thursday, April 21<sup>st</sup>, 2016, 10 - 11:30am**

◆ **Family Leave** - Fed & CA Family Medical Leave, California's Pregnancy Leave, Disability Leave, Sick Leave, Workers' Comp, etc.; Making sense of them.

**Thursday, May 19<sup>th</sup>, 2016, 10 - 11:30am**

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

**Thursday, June 16<sup>th</sup>, 2016, 10 - 11:30am**

◆ **Hiring & Maintaining "At-Will"** - Planning to hire? Putting to work? We discuss maintaining "At-Will" to protect you from the "For-Cause" Trap!

**Thursday, July 21<sup>st</sup>, 2016, 10 - 11:30am**

**There is No Seminar in August or December**

◆ **Forms & Posters** - and Contracts, Signs, Handouts, Fliers - Just what paperwork does an Employer need?

**Thursday, September 15<sup>th</sup>, 2016, 10 - 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 20<sup>th</sup>, 2016, 10 - 11:30am**

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

**Thursday, November 17<sup>th</sup>, 2016, 10 - 11:30am**



**Dinner for 2 at the Vintage Press!**  
*That's right!* When a business that you recommend joins Pacific Employers, we treat you to dinner for two at the Vintage Press.  
Call 733-4256 or 1-800-331-2592.

Labor Law Update Enclosed!

Pacific Employers  
306 North Willis Street  
Visalia, CA 93291  
559 733-4256  
(800) 331-2592  
Fax 559 733-8953  
www.pacificemployers.com  
email - peinfo@pacificemployers.com



PRESORTED  
STANDARD  
U.S. POSTAGE  
PAID  
PERMIT NO. 520

Return Service Requested

Pacific Employers  
MANAGEMENT ADVISOR  
Over 50 Years of Excellence



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.

### DELAY TO CADILLAC TAX

The Consolidated Appropriations Act, 2016, became law on January 1 and includes a two-year delay in the implementation of the Affordable Care Act's excise tax on high cost employer-sponsored health coverage — commonly referred to as the "Cadillac Tax." The excise tax, which would have gone into effect in 2018, will now be delayed until 2020.

The excise tax is a 40 percent tax on the aggregate value of employer-sponsored health plan coverage that exceeds \$10,200 for self-only coverage and \$27,500 for family coverage. The tax, which applies to both insured and self-insured group health plans, will be imposed on insurance companies, employers and plan administrators depending on the type of arrangement involved.

After 2018, the thresholds are indexed for cost-of-living adjustments and may be increased to reflect the age and gender of the population covered, for retired non-Medicare eligible individuals between the ages of 55 and 64 and where the majority of the employees in the plan are engaged in certain high-risk professions.

In addition to changing the implementation date, the newly signed Act also makes the excise tax deductible against income taxes and requires that the Comptroller General of the United States study and report to Congress on the suitability of the benchmark to be used for the age and gender adjustment to the applicable dollar limits under the tax. [PE]

### NO-RECORDING POLICY VIOLATES FEDERAL LABOR LAW - NLRB

Whole Foods Market Inc's policy prohibiting employees from recording in the workplace without prior approval violates federal labor law, the National Labor Relations Board ruled on Thursday.

A divided three-member NLRB panel held that Whole Foods' policy was too broad and could be viewed as restricting the right to record concerted activity protected by the National Labor Relations Act, such as recording images of picketing, documenting workplace hazards or capturing evidence for later use in employment-related disputes. [PE]

### DOL COLLECTS \$247 MILLION IN BACK WAGES

As part of their year-end information, the Department of Labor's Wage & Hour Division (WHD) released its enforcement statistics for FY2015.

The number of employees receiving back wages was 240,000, the lowest since FY2010. With 21,902 complaints, WHD had its fewest complaints in nearly 20 years, since FY1997. Those complaints are taking longer to resolve—125 days, up from 116 days last year. WHD's concluded cases—27,914—also continued their four-year downward trend with the third fewest number of concluded cases since FY1998's high of 50,344.

WHD's efforts in the low-wage industries (agriculture, day care, restaurants, garment manufacturing, guard services, health care, hotels/motels, janitorial services, and temporary help) were down again from the high of FY2012, with decreases in cases, back wages recovered, and employees who received back wages.

Ultimately, the snapshot of data provided indicates that WHD is spending more time on targeted cases in specific industries. Those cases are taking longer to complete, likely due in part to WHD's efforts to assess civil money penalties.

Employers, particularly those in the low-wage industries flagged above, should take the time now—before WHD announces it plans to investigate—to review their payroll practices. For example, we have reason to believe that WHD is already focusing its attention on the hotel/motel industry and will only step that attention up in 2016. [PE]

Want Breaking News by E-Mail?  
Just send a note to  
peinfo@pacificemployers.com  
Tell us you want the News by E-Mail!