

## TOP OF THE NEWS

### “Better Late Than Never”

**2005** is over! January 1, 2006, was the deadline for all organizations with 50 or more employees to have completed their supervisory training on the “Prevention of Sexual Harassment.”

And, although they were not widely publicized, the Department of Fair Employment and Housing Commission issued draft regulations concerning the training requirements at its late summer meeting but doesn't appear to have adopted them as the website of the DFEH says;

**Important! All parties inquiring about proposed regulations on AB 1825 Mandatory Sexual Harassment Training should contact the Fair Employment and Housing Commission at (415) 557-2325.**

For most of 2005 there has been controversy about what form the training had to take, whether computer-based training would be permitted, and what qualifications were required to act in the role of training instructor.

As with many other such government requirements, consultants and attorneys flocked to this as a new revenue source. And, as with so many other situations, employers have sometimes fallen victim to unscrupulous vendors.

There is no requirement for trainers to be “certified” by any source. If someone tells you their trainers are “certified” be highly suspect. Even if those instructors are licensed attorneys in California. There is no state requirement that instructors be “certified.” Further, if someone tells you your supervisors

will be “certified” to deal with sexual harassment properly, disregard the rest of what they tell you. No one can become an expert in sexual harassment issues in just two hours.

The new regulations could spell out what is required of an instructor: “Trainers or educators...include California licensed attorneys, human resource professionals, psychologists or others provided they have legal education or practical experience in harassment training and knowledge of California laws prohibiting unlawful harassment...”

The regulations also cite specific training content requirements if the harassment training is to meet state standards. Webinars and e-Training are specifically permitted under the new regulations but they must meet the same content requirements as classroom programs.

And, there are specific provisions for minimum training segments in each type of delivery format. While you won't find the regulations on its web site, you may wish to visit the Department of Fair Employment and Housing (DFEH) at <http://www.dfeh.ca.gov/> to get current issues of news releases processed by the Commission and the Department.

Pacific Employers can help you set up a training program to keep you in compliance. [PE]

## Cal/OSHA Form 300 Enclosed!

### President's Report

~Dave Miller~

#### Posting the Recordkeeping Form



**C**alifornia employers in high hazard industries with 10 or more employees are required to comply with

Cal/OSHA's Form 300 recordkeeping standard. If you're like many employers, you may be aware that there are new recordkeeping rules, but you may not be clear on what's changed. The agency describes the new requirements as “simpler” and “easier to follow” . . . than the old Log 200.

The following are some of the highlights of the changes:

- Cal/OSHA Form 300 (injury and illness log) has been simplified and can be printed on legal-sized paper.
- Cal/OSHA Form 301 (injury and illness report) includes more data about how the incident occurred.
- There is greater flexibility to allow employers to keep all the information on computers, at a central location, or on alternate forms.
- Employers are required to protect workers' privacy by withholding an individual's name on Form 300 for certain types of incidents includ-

ing sexual assaults, HIV infections, and mental illness.

- Employers must call in all fatal heart attacks occurring at work.
- The term “lost workdays” is eliminated, and the rule requires recording of days away, days of restricted work, or transfer to another job. Also included are new rules for counting that rely on calendar days instead of workdays.
- The annual summary must be posted for three months instead of one.
- Sections have been added clarifying work relationship when employees travel or work out of their homes.
- Employers are required to record all needlestick and sharps injuries involving contamination by another person's blood or other potentially infectious material.

Remember that the requirement to post the new Form 300 is for the three months of February thru April this year. [PE]

Everything comes to him who  
hustles while he waits.

— Thomas A. Edison

## 2006 All-In-One Poster

Pacific Employers has revised the annual All-In-One Posters to include one mandatory change on the 2006 poster - the inclusion of Your Rights Under USERRA, the military leave poster mandated by the Veterans Benefits Insurance Act of 2005. The Federal Department of Labor (DOL) published the new posting on March 10, 2005.

The Employment Development Department (EDD) is making changes to its "Notice to Employees" posting, which covers rights to Unemployment Insurance (UI), State Disability Insurance (SDI) and Paid Family Leave (PFL). When the agency determines exactly what the changes are, and whether they are considered mandatory, we will provide the information to our clients.

Additional posters in English or Spanish can be had at our office at 306 N. Willis, Visalia or call with your requests. [PE]

### Equal Pay Complaint Struck Down

The U.S. Court of Federal Claims has ruled in favor of the Federal Aviation Administration after three high-level female managers sought the difference between their earnings and those of their male colleagues for equal work.

The court assumed that the plaintiffs could establish that FAA paid them less than their male colleagues for work that requires the same skill, effort and responsibility, and that is performed under similar circumstances.

The burden then shifted to the FAA to show that the differential was justified according to one of the Act's four exceptions, the decision said.

In this case the agency moved for summary judgment under the affirmative defense that any pay disparities were due to a "factor other than sex," according to federal claims case No. 00-222C. The agency had to prove that gender-based pay differences are "business related," rather than merely a pretext for discrimination-in essence, that the gender-neutral factor it identified caused the wage difference.

In determining that, court asked if the pay plan and policies placing the plaintiffs in it constituted "factors other than sex," whether the pay plan and policies had a rational basis, and if the pay plan and policies were applied in a discriminatory manner.

It concluded that FAA's pay plan -- in this case for certain air traffic controllers -- is gender-neutral on their face, and are rationally related to legitimate government interests.

It said no evidence had been identified that would prove that exceptions to the plan and rules based on gender were the cause of any pay disparities suffered by plaintiffs.

Further, it said no evidence supported the plaintiffs' claims of Equal Pay Act violations, and concluded that the difference in wages was caused by a "factor other than sex," and ruled in favor of the government. [PE]

## "How can I Increase Security and Increase Profits?"

**A**s you are all aware, increases in fuel prices have "fueled" inflation. This is affecting all businesses small and large. It is reducing profits so fast that it is almost impossible to anticipate when it will "level off."

One of the avenues business owners can utilize to "make up" lost profits due to inflation is to reduce operating expenses and increase security. Security is defined in the dictionary as "Freedom from risk or danger, safety." We define it as the prevention of loss due to employee misconduct, embezzlement or malfeasance.

Many times business owners tell me something to the effect of, "Well I know I'm losing a little bit due to theft or not paying attention to what goes out the door, but it can't be that much." I am here to tell you today, that many times, it is a whole lot more than you would ever imagine! With inflation and California's over-regulation of businesses you will not be in business if you don't pay attention to these concerns.

Businesses CAN reduce loss but CANNOT reduce fuel prices. Well, how can you reduce theft or malfeasance? If you suspect theft or carelessness in your business, start by bringing it out into the open. What I mean by this, is to tell your employees about missing product or poor performance. Profit is not a sin, businesses that don't make profit don't stay in business.

If you have a monthly letter to your employees, let them know of missing product and ask for their help. You will be surprised what the honest employees will tell you, if asked. Let employees know that you will prosecute to the fullest extent of the law should embezzlement be discovered. Don't be afraid to let employees know that increases in their wages is predicated upon the success and profitability of the business.

This is a start, but you know your business better than anyone else and you need to keep an eye on every detail. Especially when it comes to letting product or services "sneak out the back door." If your sixth sense tells you something is wrong, something is wrong.

We always advise business owners that there is no magic wand you can wave over your business to make it profitable, you must manage all aspects, including security. Be vigilant with all security aspects of your business and you will be profitable!

Thanks, as always, for reading and next month we will visit NSF check prevention and collection. Rocky J. Pipkin.

*Rocky Pipkin,*  
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**Cal/OSHA Form 300 Enclosed!**



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

## Call Cal/OSHA!!

**Q:** “I had an employee injured on the job. At what point am I required to report the incident to Cal/OSHA?”

### Reporting Rules

**A:** All employers, regardless of size, must report all incidents that result in any of the following:

- Death of an employee;
- Hospitalization of an employee for more than 24 hours for treatment other than observation; or
- Loss or serious disfigurement of any body part.

The law requires that every employer shall report immediately by telephone or fax to the nearest District Office of the Division of Occupational Safety and Health any serious injury, illness, or death of an employee occurring in the workplace or in connection with any employment. Should the local Cal/OSHA office be closed at the time, it should be reported using the Cal/OSHA toll-free central number, (800) 321-OSHA.

In this instance immediately means as soon as practically possible, but not longer than eight (8) hours after the employer knows, or with diligent inquiry would have known, of the serious injury, illness, or death. If the employer can demonstrate that exigent [i.e. dire] circumstances exist, the time frame for the reporting may be made no longer than 24 hours after the incident.

Failure to notify Cal/OSHA within the required time frame carries a penalty of \$5,000. This can become quite a problem when the injury becomes serious after the eight hours an employer has to report.

It is our opinion that you should report any injury immediately if it has the chance of becoming a lost time or serious accident as Cal/OSHA has little tolerance for failure to call, and that will cost you \$5,000 if you guess wrong. And besides, there is no cost to call. [PE]



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.

## EMPLOYMENT SEMINAR

**S** PONSORED BY THE SMALL BUSINESS DEVELOPMENT CENTER (SBDC) and the Workforce Investment Board at 10:00 am on the 3<sup>rd</sup> 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 Shedule

♦ **Labor Law Update** - The courts and legislature are Constantly Changing the Rules - Learn about the recent changes to both the California and U.S. laws that affect employers of all types and sizes.

*Thursday, January 19th, 10am - 11:30am*

♦ **Employee Handbook Development** - Every employer needs a handbook. The law and the courts tells us what to put in it. We discuss planning considerations; What to put in and what to leave out. Protect your right to manage!

*Thursday, February 16th, 10am - 11:30am*

♦ **Harassment & Discrimination in the Workplace** - How does your firm handle this hot topic? Learn about the seven (7) requirements that must be met by all employers. “What are the Protected Classes.” Equal Employment Fundamentals.

*Thursday, March 16th, 10am - 11:30am*

♦ **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*

♦ **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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**Cal/OSHA Form 300 Enclosed!**

**Pacific Employers**  
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.

## **HOMELAND SECURITY I-9 FORM**

### **Minor Changes on Revised Form**

**A new Form I-9** has been released by the U.S. Citizenship and Immigration Services (USCIS) a Bureau of the U.S. Department of Homeland Security. It is now available from our website. This version of the form must be used for all applicants starting with January 1, 2006. Aside from replacing outdated references to the Department of Justice and the former INS with references to DHS and its components, the current edition of Form I-9 is the same as the 11/21/91 edition.

The Form I-9 consists of three pages. The first page holds instructions. Page two contains the form that must be completed. And, page three contains the "Lists of Acceptable Documents" that may be accepted to prove identity and employment eligibility.

The following are no longer valid for use in proving either identity and/or employment eligibility:

Permanent Resident Card, Form I-151 (Withdrawn from circulation)

*Certificate of U.S. Citizenship - Form N-560 or N-561*

*Certificate of Naturalization - Form N-550 and N-570*

*Unexpired Reentry Permit - Form I-327*

*Unexpired Refugee Travel Document - Form 571*

Added to the list of documents acceptable for proving employment eligibility is the *Form I-766, Employment Authorization Document (EAD)*.

Download your own Form I-9 from our forms page at -  
<http://www.pacificemployers.com/forms.htm>

## **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.*

## **REST & MEAL PENALTIES**

**A California appeals court has issued** the first opinion holding that the one hour of pay for meal and rest period violations is a penalty, not wages. By issuing this decision, the court ruled that these claims have a one-year, rather than three-year statute of limitations. Class action claims for meal and rest period violations have been on the rise because they have the potential for substantial liability arising from per-day, per-employee penalties.

The opinion could be presented to the California Supreme Court for review where a contrary result could invalidate the related provision of the meal and rest period regulations currently awaiting approval. *Murphy v. Kenneth Cole Productions, Inc.*

**Employers Should:**

Create and communicate to employees policies regarding meals and rest periods.

Train supervisors to make sure employees get all meal and rest periods required by law and applicable wage orders.

Pay any penalty for a missed meal and rest period in the payroll period in which it occurred to assure adequate record keeping. [PE]