Pacific Employers
Management Advisor
Celebrating 43 Years!
January 2007

Top of the News

State Supreme Court to Review Validity of General Release Clauses

At the urging of the California Chamber of Commerce, the California State Supreme Court has agreed to review the enforceability of general release clauses and narrowly tailored covenants not to compete that are commonly used in business transactions.

Stolen Computer Employee Fired

Boeing Co. has fired the employee whose stolen laptop contained personal information on 382,000 workers and retirees, the company said Friday.

Chairman and CEO Jim McNerney told employees that the worker who left the computer unattended was being dismissed for violating the company's data-protection policy, and managers were being reprimanded.

"Cutting corners is never acceptable — especially when the trust of the whole team is at stake," McNerney said in an internal memo Thursday.

The computer theft was the third at Boeing in 13 months and puts its work force at risk for identity theft and credit-card fraud.

Files on the laptop contained employees' names, Social Security numbers, home addresses, phone numbers and birth dates, with some listing salary information.

McNerney said the company believes the incident was the result of petty theft, not an attempt at identity theft, but it is taking further steps to prevent the loss of sensitive data from recurring.

Boeing is providing credit-monitoring services for three years for those affected. [PE]

DoL Wants FMLA Feedback

The U.S. Department of Labor (DOL) is reviewing Family and Medical Leave Act regulations and seeking information and comment from the public.

Specifically, the DOL is seeking comment on a series of questions covering intermittent FMLA leave, the definition of "eligible employee" under FMLA, the definition of "serious health condition" under FMLA, leave determinations/medical certifications, and other topics.

Written comments can be submitted to Richard M. Brennan, Senior Regulatory Officer, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W. , Washington , D.C. 20210.

Electronic comments may be submitted by e-mail to: whdcomments@dol.gov [PE]

Cal/OSHA Form 300 Enclosed!

President's Report
~Dave Miller~

Posting the Cal/OSHA Recordkeeping Form

California employers in high hazard industries with 10 or more employees are required to comply with Cal/OSHA's Form 300 recordkeeping standard. With this issue we supply you with the Form 300 and on its reverse side we include the Summary, which is the part of the form that you actually are required to post.

Employers are required to complete both OSHA Form 300 Log of Work-Related Injuries and Illnesses and OSHA Form 300-A Summary of Work-Related Injuries and Illnesses, however, only the latter, the Form 300-A, is required to be posted in the workplace. The reason you post only the Summary is that it does not have the privacy concerns of the Form 300 and the former Log 200.

You must post the Summary only – not the Log – by February 1 of the year following the year covered by the form and keep it posted until April 30 of that year. [PE]

California Minimum Wage Now $7.50 Per Hour!

The California minimum wage for non-exempt workers was increased to $7.50 per hour effective January 1, 2007. An additional increase to $8.00 per hour will be effective January 1, 2008.

This increase also affects many of California's exempt executive, administrative and professional employees, and those required to supply their own tools, whose minimum salary requirements are tied to the state minimum wage. For those employees the minimum salary increased to $2,600 per mo. ($31,200 per year) on 1/1/2007 and to $2,773.33 per mo. ($33,280 per year) effective 1/1/2008.

The change in the Minimum Wage is one of the many changes Pacific Employers made in the new, 2007 All-In-One Poster received last month. [PE]

God gives burdens, also shoulders.
— Yiddish Proverb

New Rules Compel Firms to Track E-Mail!

U.S. companies will need to keep track of all the e-mails, instant messages and other electronic documents generated by their employees thanks to new federal rules that have now gone into effect.

The rules, approved by the Supreme Court in April, require companies and other entities involved in federal litigation to produce "electronically stored information" as part of the discovery process, when evidence is shared by both sides before a trial.

The change makes it more important for companies to know what electronic information they have and where. Under the new rules, an information technology employee who routinely copies over a backup computer tape could be committing the equivalent of "virtual shredding," said Alvin F. Lindsay, a partner at Hogan & Hartson LLP an expert on technology and litigation.

James Wright, director of electronic discovery at Halliburton Co., said that large companies are likely to face higher costs from organizing their data to comply with the rules. In addition to e-mail, companies will need to know about things more difficult to track, like digital photos of work sites on employee cell phones and information on removable memory cards, he said.

Both federal and state courts have increasingly been requiring the production of relevant electronic documents during discovery, but the new rules codify the practice, legal experts said.

The rules also require that lawyers provide information about where their clients' electronic data is stored and how accessible it is much earlier in a lawsuit than was previously the case.

There are hundreds of "e-discovery vendors" and these businesses raked in approximately $1.6 billion in 2006, Wright said. That figure could double in 2007, he added.

Another expense will likely stem from the additional time lawyers will have to spend reviewing electronic documents before turning them over to the other side. While the amount of data will be narrowed by electronic searches, some high-paid lawyers will still have to sift through casual e-mails about subjects like "office birthday parties in the pantry" in order to find information relevant to a particular case.

Martha Dawson, a partner at the Seattle-based law firm of Preston Gates & Ellis LLP who specializes in electronic discovery, said the burden of the new rules won't be that great.

Companies will not have to alter how they retain their electronic documents, she said, but will have to do an "inventory of their IT system" in order to know better where the documents are.

The new rules also provide better guidance on how electronic evidence is to be handled in federal litigation, including guidelines on how companies can seek exemptions from providing data that isn't "reasonably accessible," she said. This could actually reduce the burden of electronic discovery, she said. [PE]

Sex Harassment Prevention Seminar

The Visalia Chamber of Commerce and Pacific Employers will present the state mandated, Two Hour, Supervisors' Sexual Harassment Prevention Training Seminar & Workshop on Wednesday, January 17th, 2007. This quarterly compliance seminar includes a full breakfast, handouts and concludes with a completion certificate at 10:30am.

$25 for Pacific Employers or Chamber Members
Lamp Liter Inn January 17th, 8:30am—10:30am
Registration & Breakfast begin at 8:00am
Call the Chamber Office - 734-5876 to Register

HARASSMENT PREVENTION RULES
FEHC Adopts Rules

California's Fair Employment and Housing Commission ("FEHC") has now adopted harassment training regulations as its final proposed regulations. The regulations interpret the sexual harassment training requirements set forth in California Government Code Section 12950.1.

Employers with 50 or more employees are required to provide two hours of "classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees" every two years. It is not necessary that all 50 employees or contractors work at the same location, or that they all work or reside in California. Additionally, the training requirements apply only to those supervisors located within the state of California. Businesses created after January 1, 2006, or that expand to 50 employees and/or contractors and thus become covered employers under the regulations, must provide training to supervisors within six months.

The acceptable forms of interactive training must include questions that assess learning, skill-building activities that assess the supervisor's application and understanding of content learned, and numerous hypothetical scenarios about harassment, each with one or more discussion questions so that supervisors remain engaged in the training. [PE]

2007 All-In-One Poster

Pacific Employers' 2007 All-In-One Poster includes all mandatory changes which includes the required federal and state postings for most businesses. It also includes the new state "Minimum Wage" posting that notes the January 1st increase to $7.50 per hour.

Additional posters can be had at our office at 306 N. Willis Street, Visalia or call with your requests.

Note: You're not done when you get the "All-in-1" Poster up. You still need to make sure you have the Industrial Welfare Commission's (IWC) order for your business posted. *Check the information in the "All- In-1" Poster, contact our office or go to our Forms Page of our Web site for information on the IWC orders for your business.* [PE]

Cal/OSHA Form 300 Enclosed!

Human Resources Question with Candice Weaver

The Month's Best Question

TIP POOLING

Q: "What are the rules on Tip Pooling?"

A: Many restaurants require tipped employees to contribute a portion of their tips into a pool which is then split among other employees. This is perfectly valid under the federal Fair Labor Standards Act's FLSA tip-credit provisions, but only if you follow certain limitations such as how much is contributed and who all will share in the pool.

How Much Money Can Be Put In?

Tipped employees cannot be required to contribute more of their tips to a pool than is "customary and reasonable" in the locality in which they work. As an enforcement position, the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD), which enforces the FLSA, will not challenge pool contributions equal to 15% or less of an employee's tips. If the proportion is greater than 15%, then you might well be called upon to show (if you can) that the higher amount is in fact customary and reasonable in your particular community. This problem can sometimes happen where, for example, an employer requires a contribution based on a percentage of an employee's sales instead of using a percentage of his or her tips.

Who May Participate In The Pool?

Another limitation is that tipped employees cannot be required to share their tips with workers who do not customarily and regularly receive tips. The WHD has said that wait-staff, bellhops, counter personnel who serve customers, bus employees, and service bartenders are among the kinds of employees who are permissible pool participants. But the WHD has also taken the position that dishwashers, cooks, janitors, and laundry-room attendants are not the kinds of employees who can be permitted to participate in tip-pooling arrangements.

Sometimes tipped employees decide on their own to share their tips with co-workers who are not tipped employees and who do not participate in a tip pool. Or, tipped employees might voluntarily decide to share a larger proportion of their tips than their employer could require them to contribute to a tip pool. If they do this freely, not under any formal arrangement, and independently of and without any pressure or coercion from their employer, then this does not invalidate the tip credit or a tip pool.

It All Adds Up

These amounts sound small at first, but they add up quickly. The financial exposure presented by allowing ineligible employees to share in a tip pool can be serious indeed. Reimbursing employees for lost wages and money improperly contributed to the pool may not be a huge amount if you're dealing with a single employee, but most cases there is a whole group of past and present employees that must be considered. As with all wage-hour issues, small mistakes – even perfectly innocent ones – can lead to large consequences. [PE]

Employment Seminars

The Small Business Development Center 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

- **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 18th, 2007, 10am - 11:30am
- **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.

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

Return Service Requested

Cal/OSHA Form 300 Enclosed!

Pacific Employers
Management Advisor
Celebrating 41 Years!

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

Ninth Circuit Tightens ADA Standards

Employers who use across the board qualification standards, such as hearing and vision tests, to reduce safety risks that potentially screen out disabled employees may need to reevaluate these standards. In Bates v. UPS, the Ninth Circuit tightened the already stringent standards for employers who use such across the board qualification standards in the name of safety.

The Americans with Disabilities Act ("ADA") has long been construed to allow employers to use qualification standards which screen out certain disabled individuals as long as the standards relate to an essential job function and are justified by "business necessity." The Ninth Circuit recently determined that showing justification by "business necessity" requires an individual assessment of each applicant or employee in order to determine whether reasonable accommodation might permit the applicant or employee to safely perform the job. [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.**

New San Francisco Paid Sick Leave Ordinance

In the November 2006 election, more than 61% of San Francisco voters passed Proposition F, mandating extraordinary paid sick leave entitlements for employees working in San Francisco. In fact, with passage of the Paid Sick Leave Ordinance, San Francisco became the first city in the state to require all employers to provide paid sick leave.

Although Proposition F supporters largely focused their electioneering efforts on low-wage workers, this new law requires that employers provide broad entitlements that apply to virtually all employees working in San Francisco, including temporary employees hired through temporary agencies and part-time employees. Employers with workers in San Francisco are covered by this new law

The required accrual rate is 1 hour of paid sick leave for every 30 hours worked by an employee. If an employee works 40 hours per week for 52 weeks in the year (a total of 2080 hours, with no time off due to vacation or other absence), the employee would accrue a total of 69.33 hours per year of paid sick leave. The same employee who took two weeks of vacation, and ten paid holidays, would accrue 64 hours of paid sick leave in that year.

The ordinance expands the category of other persons for whom the employee may use paid sick leave and is more generous than "kin-care" as it permits all of the paid sick leave to be used for other individuals' needs, instead of half as provided by "kin-care." [PE]