

Pacific Employers

MANAGEMENT ADVISOR

Celebrating 44 Years!

January 2008

TOP OF THE NEWS

CALIFORNIA EMPLOYERS MUST PROVIDE NOTICE

Effective January 1, 2008, California employers are required to provide all employees with written notice of their possible right to an Earned Income Tax Credit on their federal income tax returns. Legislative sponsors felt the measure, Assembly Bill 650, was necessary because "hundreds of millions of federal dollars go unclaimed by the working poor in California" since few eligible employees participate in the federal earned income tax credit program.

"... HUNDREDS OF MILLIONS ... DOLLARS GO UNCLAIMED..."

To comply with the statute, an employer must hand-deliver or mail a written notice to all employees (defined as any person who is covered by unemployment insurance by his or her employer, under the California Unemployment Insurance Code). The notice must be provided within one week (whether before, after or at the same time) of when

the employer provides the employee with an annual wage summary, such as W-2 or 1099 Forms. The required notice must state:

BASED ON YOUR ANNUAL EARNINGS, YOU MAY BE ELIGIBLE TO RECEIVE THE EARNED INCOME TAX CREDIT FROM THE FEDERAL GOVERNMENT. THE EARNED INCOME TAX CREDIT IS A REFUNDABLE FEDERAL INCOME TAX CREDIT FOR LOW-INCOME WORKING INDIVIDUALS AND FAMILIES. THE EARNED INCOME TAX CREDIT HAS NO EFFECT ON CERTAIN WELFARE BENEFITS. IN MOST CASES, EARNED INCOME TAX CREDIT PAYMENTS WILL NOT BE USED TO DETERMINE ELIGIBILITY FOR MEDICAID, SUPPLEMENTAL SECURITY INCOME, FOOD STAMPS, LOW-INCOME HOUSING OR MOST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PAYMENTS. EVEN IF YOU DO NOT OWE FEDERAL TAXES, YOU MUST FILE A TAX RETURN TO RECEIVE THE EARNED INCOME TAX CREDIT. BE SURE TO FILL OUT THE EARNED INCOME TAX CREDIT FORM IN THE FEDERAL INCOME TAX RETURN BOOKLET. FOR INFORMATION REGARDING YOUR ELIGIBILITY TO RECEIVE THE EARNED INCOME TAX CREDIT, INCLUDING INFORMATION ON HOW TO OBTAIN THE IRS NOTICE 797 OR FORM W-5, OR ANY OTHER NECESSARY FORMS AND INSTRUCTIONS, CONTACT THE INTERNAL REVENUE SERVICE BY CALLING 1-800-829-3676 OR THROUGH ITS WEB SITE AT WWW.IRS.GOV. [PE]

Cal/OSHA Form 300 Enclosed!

President's Report ~Dave Miller~

The Time Has Come!



Way back in the 1980's when Pacific Employers was rebranding itself to the very successful consulting program that we have become, we attempted to set a price point that we could live with for a long time. Little did we know that during the time that gas went from 36 cents a gallon to \$3.36, and a \$30,000 house went to \$300,000, we would be able to maintain the same monthly dues rate.

Much of our ability to keep our rates nearly the same for more than 25 years has been our solid growth. However, there comes a time when increased numbers and continued positive growth, fail to keep the wolf away from the door.

So, the time has come to make some changes. And a dues increase is in the offing. We will be raising our dues in the second quarter by \$15 a month for a quarterly increase of \$45. Several other fees will be adjusted upward, but our services, including unlimited over the phone consultation, will continue unchanged. *Hopefully, for at least another 25 years!* [PE]

FORM 300 RULES

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 1st of the year following the year covered by the form and keep it posted until April 30th of that year. [PE]

Energy and persistence alter all things. - Benjamin Franklin

Supervisors' Sexual Harassment Prevention Training

Visalia Chamber of Commerce and Pacific Employers, will jointly host a state mandated Supervisors' Sexual Harassment Prevention Training Seminar & Workshop with a continental breakfast on **January 16th, 7:30am—10:00am**, at the Visalia Marriott.

RSVP Visalia Chamber - 734-5876 – \$25
Certificate – Forms – Guides – Full Breakfast

New Laws

MILITARY SPOUSE LEAVE LAW TAKES EFFECT IMMEDIATELY

Following the lead of Illinois, Indiana, Maine, Minnesota, Nebraska and New York, California has created a new leave of absence right for spouses of military personnel. The law takes effect immediately.

Assembly Bill 392 requires employers with 25 or more employees to give up to 10 days of unpaid time off to employees with spouses on leave from certain types of active military service.

Employer coverage AB 392, now codified at Military & Veterans Code § 395.10, applies to both public and private employers who employ 25 or more employees. Because the statute does not exclude temporary, part-time or inactive employees (i.e., employees on leave), or employees outside of California, employers should count all such employees as of the date of the leave request to determine whether they are covered by this new law. Independent contractors are not included.

New I-9 ISSUED BY USCIS

On November 26, 2007, U.S. Citizenship and Immigration Services ("USCIS") published a notice in the Federal Register that requires employers to use the newly revised I-9 form no later than December 26, 2007. Employers who do not use the revised I-9 form on or after December 26, 2007 will be subject to all applicable fines and penalties under the Immigration and Nationality Act.

The new I-9 Form is available at Pacific Employers' office or from our Website on the Forms Page.

The USCIS released the revised I-9 form and the updated Handbook for Employers, Instructions for Completing the Form I-9. The revised I-9 form (dated June 5, 2007) reduces the number of documents employers may accept for newly hired employees during the employment eligibility verification process in compliance with the reduction

requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

MINIMUM WAGE INCREASES

The California minimum wage and the minimum wage required for exempt employees increases on **January 1, 2008**.

Effective 1/1/08, the minimum wage for all employees increases to \$8.00 an hour. Exempt employees must be paid at least twice minimum wage. Beginning 1/1/08, an employee must be paid the annual equivalent of at least \$33,280. An exempt employee must also meet the salary and job duties requirements.

S.F. MINIMUM WAGE INCREASE

San Francisco's Minimum Wage increases to \$9.36 per hour. Starting January 1, 2008, San Francisco's lowest paid workers will receive a 2.4% raise. The San Francisco Office of Labor Standards Enforcement announced today that the city's minimum wage of \$9.14 per hour will be adjusted to \$9.36 effective January 1, 2008. The Minimum Wage Ordinance, passed by the voters in November 2003, calls for annual rate adjustments based on the previous year's Consumer Price Index for urban wage earners in the San Francisco-Oakland-San Jose metropolitan area.

IRS RAISES THE MILEAGE RATE

The Internal Revenue Service announced that the standard mileage reimbursement rate for employees who use their own cars for business purposes will rise from 48.5 cents per mile in 2007 to 50.5 cents per mile in 2008.

Computer Pro's Hourly Rate Lowered

The California Legislature recently enacted SB 929 in which the hourly rate for exempt Computer Professionals was lowered.

California law exempts a computer professional from overtime requirements if the employee is primarily engaged in work that is intellectual or creative. This bill lowered the hourly minimum compensation from \$41 to \$36, effective Jan. 1, 2008. The rate for 2009 will be set by Oct. 1, 2008 by the Department of Industrial Relations. [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.

Cal/OSHA Form 300 Enclosed!



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

Can We Test?

Q: "May we test our employment applicants for drugs, physical ability, criminal tendencies?"

A: Employment tests such as cognitive tests, criminal background checks and physical ability tests can often help employers sift through large pools of job applicants and employees seeking promotion.

A new fact sheet issued by the U.S. Equal Employment Opportunity Commission ("EEOC") reminds employers to be careful in deciding what tests to use and how to score those tests. Though the fact sheet does not create new rules, the EEOC's focus on an increase in testing-related discrimination charges should drive employers to ensure that their own procedures comply with federal anti-discrimination laws. The Web address for the fact sheet is listed at the end of this article.

Title VII of the Civil Rights Act of 1964 ("Title VII"), the Americans with Disabilities Act of 1990 ("ADA") and the Age Discrimination in Employment Act of 1967 ("ADEA") prohibit discriminatory employment testing. Employers can be liable for violating these laws not only if they use employment tests to discriminate intentionally, but also if they use neutral testing procedures that "disproportionately exclude people in a particular group by race, sex, or other covered basis." This type of disparate impact claim is subject to the same burden shifting as other Title VII claims.

Where a test or other selection procedure has a disparate impact on members of a protected class, the employer must show that the test or procedure "is job-related and consistent with business necessity." If the employer makes it over this hurdle, according to the EEOC, employees can still argue that a "less discriminatory alternative" is available to predict job performance.

The fact sheet highlights that employment tests also may be vulnerable to ADA claims if they include unlawful disability-related inquiries, screen out disabled individuals based on standards that are not job-related and consistent with business necessity, or are administered in a manner that fails to provide reasonable accommodations to otherwise qualified individuals with disabilities.

The EEOC fact sheet concludes with a list of "best practices" in which it is suggested that employers ensure that tests and other selection procedures are properly validated for the positions and purposes for which they are used. Employers who rely on tests validated years ago may be violating the law. Employers need to stay informed about changes in job requirements and modify testing procedures accordingly. [PE]

www.eeoc.gov/policy/docs/factemployment_procedures.html

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Tell us you want the News by E-Mail!

No-Cost Employment Seminars

The Small Business Development Center and Pacific Employers host this Free Seminar 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.

2008 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 17th, 2008, 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 21st, 2008, 10am - 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 20th, 2008, 10am - 11:30am

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

Thursday, April 17th, 2008, 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 15th, 2008, 10am - 11:30am

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

Thursday, June 19th, 2008, 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 17th, 2008, 10am - 11:30am

◆ **Record Keeping** - Forms, Posters, Signs, Handouts, Fliers - Just what paperwork, posters, flyers and handouts does an Employer need?

Thursday, September 18th, 2008, 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 16th, 2008, 10am - 11:30am

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

Thursday, November 20th, 2008, 10am - 1:30pm

There is No Seminar in December

Cal/OSHA Form 300 Enclosed!

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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.

Fed OSHA's New Rule on PPE

OSHA Unveils Final Rule on Employer Paid Personal Protective Equipment

The Occupational Safety and Health Administration announced the publication in the Federal Register of a final rule on Employer paid personal protective equipment ("PPE"). The rule requires Employers to pay for any PPE used by an employee to comply with the PPE requirements in OSHA's standards. If PPE is not required by the standards, the Employer is not required to pay.

The final rule contains exceptions for certain ordinary protective equipment such as safety-toe footwear, prescription safety eyewear, everyday clothing and weather related gear and logging boots. Employees can still be required to pay for these types of PPE, if (with the exception of logging boots) they are permitted to wear it away from work.

The standard generally requires employers to pay for replacement PPE. However, should an employee lose or intentionally damage his or her PPE issued and paid for by the Company, the Employer is not required to pay for its replacement under the rule. [PE]

UNLIMITED CONSULTATION?

A benefit of Pacific Employers' Membership is unlimited, direct, phone consultation on labor, safety or personnel questions on the Pacific Employers' Helpline at (559) 733-4256 or Toll Free (800) 331-2592

Fresno State Cases May Cost \$27,000,000

The three recent sex discrimination cases against Fresno State could cost California State University about 10 times as much as the entire 23-campus system has paid out for similar cases in the previous five years.

A state audit released Tuesday shows that CSU paid out \$2.82 million in 41 employment discrimination cases in the last five years. That's a paltry sum compared to the \$27 million that Fresno State could owe, including the December's jury award of \$19.1 million to former women's basketball coach Stacy Johnson-Klein, unless more of the judgments are reduced on appeal.

A Fresno jury recently delivered the expensive blow to Fresno State in the Johnson-Klein case. The former coach alleged that she was fired because she pushed for women's equality. The university, which says the coach was fired for verbally abusive and erratic behavior, plans to ask the judge to overturn the verdict.

In October, former associate athletic director Diane Milutinovich settled for \$3.5 million in her discrimination case. In July, a jury awarded former volleyball coach Lindy Vivas \$5.85 million, later reduced to \$4.52 million. Settlements and jury awards are paid from CSU's risk-management fund. [PE]

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peinfo@pacificemployers.com
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