

## WHAT'S NEWS!

### Labor Law Updates

**A**ll year long the lawmakers make new laws, courts make decisions that change the laws, and administrative agencies modify the rules on how the laws are enforced. These new rules and the changes to the old rules are matters that an employer must know, or face fines, etc. That is why we have Labor Law Updates and also why they are the best attended of the seminars.

A good example of a new law that has many consequences is the "Healthy Workplaces, Healthy Families Act of 2014" new Three Day Sick Leave law. Most employers have some type of sick leave or PTO plan that allows employees to receive paid days off for illness and doctor appointments.

There is an old saying about our lawmakers "they are like cockroaches, it isn't what they eat or carry away that is the problem, but what they get into and mess up." This sick leave law could have been a simple one sentence rule that said "Each California employee will be permitted 3 sick days per year."

However, this new law adds unnecessary complications to every employer's life in many ways:

- It requires a new poster - As if we don't have enough posters already. The poster must state: (1) Employees are entitled to paid sick days. (2) The amount of sick days provided. (3) The terms of use of paid sick days. (4) That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days, or both, is prohibited. (c) Violations bring a civil penalty of \$100 per offense.
- New Reasons to take time off work with pay. Besides "sick leave" it also provides for "domestic violence, sexual assault, or stalking leave."

- Expanded beyond KinCare for family members: a child, biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis regardless of age or dependency status. A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child. Also includes a spouse, registered domestic partner, grandparent, grandchild and a sibling.
- Additional information on the "New Employee Information Form" regarding accrual and use of sick leave.
- New penalties for mistakes in sick leave permissions; and new retaliation statutes with astronomical penalties; It takes 758 words in the new law to list all the fines and penalties including \$4000 in liquidated damages penalty.
- New record keeping obligations. At least three years records documenting the hours worked and paid sick days accrued and used by an employee.
- Additional information for the paycheck stub. "... the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement . . . or in a separate writing provided on the designated pay date with the employee's payment of wages."

At the stroke of a pen, Gov. Brown brought forth this new law that applies to virtually every employer, public and private, profit or non-profit in the state of California.

Don't miss Candice's Best Question Column on Page 3 or our Free Labor Law Update Seminar Thursday, January 15th, 2015, 10am - 11:30am at the Builders Exchange at 1223 S. Lover's Lane at Tulare Avenue in Visalia, CA. [PE]

## New Employee Information Form Enclosed!

### President's Report

~Dave Miller~

### "All-in-1" Poster for 2015!

**Y**ou should have received your 2015 California & Federal "All-in-1" Poster by mail. The new poster template includes the Paid Sick Leave Law poster.

**REMEMBER**, You're not done when you get the "All-in-1" Poster up. You still need to fill out the Workers' Comp information panel and then make sure you have posted the Industrial Welfare Commission's (IWC) order for your business. Check out the **Find Your Wage Order** box in the lower left corner of the poster for details on your firm's wage order.

*Pick up extra copies of the poster at our office.*

[PE]



### Form 300 Rules

**C**alifornia employers in high hazard industries with 10 or more employees are required to comply with Cal/OSHA's Form 300 recordkeeping standard.

The Form 300 is available on our website **Forms** page in the California Government section at the top of the list and includes the form, instructions and the Summary:

<http://www.pacificemployers.com/forms.htm>

High hazard 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 related data of the Form 300. You must post the Summary only, not the Log, by February 1<sup>st</sup> of the year following the year covered by the form and keep it posted until April 30<sup>th</sup> of that year. [PE]

### Earned Income Tax Credit

**T**he Annual Federal Earned Income Tax Credit Notification (EITC) season is upon us. Employers are required to notify their employees about the availability of the EITC.

Written notification must be provided to employees in person or by mail. Notification must be provided within one week before or after, or at the same time, that you provide an annual wage summary, including, a Form W-2 or a Form 1099. [PE]

We haven't yet learned how to stay human when assembled in masses.

Lewis Thomas, physician and author (1913-1993)

## Recent Developments

### Labor Contracting Client Liability

**C**alifornia Governor Jerry Brown recently signed into legislation AB 1897 which will dramatically change civil and workers compensation liability for employers that utilize the services of labor contractors. The bill will take effect January 1, 2015 and will require employers to share with labor contractors all civil and legal liability for the payment of wages and provision of workers compensation coverage.

*"THE BIGGER CONCERN IS THE LIABILITY IN RELATION TO WAGES AND LABOR LAWS."*

A labor contractor is defined as "an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business."

Under current rules, an employer would be liable for the provision of workers compensation coverage in the event a labor contractor is found to be without coverage. This falls under the auspices of the independent contractor rule. AB 1897 changes this from a rule to law as it relates to the use of workers from a labor contractor. In this regard, not much has changed.

The bigger concern is the liability in relation to wages and labor laws. An employer can now be found liable, and be sued for claims related to wages. It is fairly easy for an employer to verify the workers compensation coverage of a labor contractor but validating the payment of wages, withholding of income taxes and provision of proper breaks for non-exempt employees may be challenging. Under AB 1897, if an employee were to file a civil claim against the labor contractor related to wages, the employer that utilized the services of that contracted employee is also, and equally, liable for that claim. This is vastly different from the previous standard where the labor contractor assumed all liability for these types of claims.

The law will not apply to everyone that uses a labor contractor. Exceptions include:

- An employer that has fewer than 25 employees (either their own or a combination of their own and temporary workers)
- An employer that uses five or fewer temporary employees provided by a labor contractor(s)
- Municipalities, school districts and other state and county agencies
- Employees that can be classified as exempt workers (professionals such as executives and lawyers)

#### Next Steps For Employers

First and foremost, use the services of a reputable temporary staffing agency that has a history of good performance. Employers will be held liable for the actions of the labor contractor so it is critical to know as much as possible about them before signing the contract. Be sure to request verification of valid and current workers compensation, general liability and employment practice liability coverage. It would also be prudent to request copies of audited financial statements and payroll records to ensure adequate funds to pay employees and proper payment of wages. Lastly, if possible, talk with the potential workers being provided through the labor contractor to detect any red flags. [PE]

### Salary Rate Increases for Software Professionals

**T**he required compensation levels for employees exempt from overtime rate of pay requirements under the California computer software professional exemption will increase by 2.2 percent from current levels beginning January 1, 2015, the California Department of Industrial Relations (DIR) has announced.

This means that the minimum hourly rate of pay necessary to qualify for the exemption will increase from \$40.38 to \$41.27; the minimum monthly salary will increase from \$7,010.88 to \$7,165.12; and the minimum annual salary will increase from \$84,130.53 to \$85,981.40. Employers are reminded that in addition to the salary requirement, California employees also must meet a stringent duties test to qualify for the exemption. [PE]

### 2015 Standard Mileage Rate Announced

**T**he IRS issued the 2015 optional standard mileage rates used to calculate the costs of operating a vehicle for business purposes. Beginning on January 1, 2015, the standard mileage rate is 57.5 cents per mile, up from 56 cents in 2014;

Under California Labor Code section 2802, California employers are required to reimburse employees for reasonable expenses necessarily incurred in the performance of their job duties. This includes expenses associated with the use of their personal vehicles for business purposes. Most employers use the standard mileage rate to satisfy their obligation to reimburse employees for expenses associated with using their personal vehicles for business travel.

Although employers are not required to use the IRS optional standard mileage rate, and can instead try to calculate an employee's "actual" expense associated with personal vehicle use (which includes more than just the cost of gas, but also the cost of wear and tear, etc.), the latter method carries risk of being challenged for not providing adequate reimbursement. [PE]

### State Fines Company For Deaths Of Two Workers

**D**isney Construction Inc. of Burlingame has been fined \$106,110 for serious violations following the May 30 deaths of two employees who fell 80 feet from a crane-hoisted platform at a bridge construction site in Winters, says Cal/OSHA.

The state investigation found that Disney Construction's crane had not been certified or visually inspected for defects to satisfy current testing and examination standards. Cal/OSHA also says the crane operator failed to perform an unmanned trial run or have a competent person inspect the rigging and platform before usage. In addition, there was no qualified, trained signal person to assist with the lifting operation, the state says.

"Employers in California are required to perform regular equipment inspections to identify and prevent mechanical problems that can lead to tragedy," says Christine Baker, director of the Department of Industrial Relations. Cal/OSHA, formally known as the division of Occupational Safety and Health, is a division of DIR.

Disney Construction was hired to build a new concrete vehicle bridge to connect the city of Winters in Yolo County to Solano County across Putah Creek. Workers were using a pile driver crane when a cable broke near the top of a pile driver. A second crane was used to hoist a personnel platform with two workers, Marcus Powell of Los Gatos and Glenn Hodgson of Richmond, so they could troubleshoot the cable on the pile driver. The rigging used to connect the platform to the crane dislodged, causing the platform and workers to fall some 80 feet to the ground. [PE]

### Sexual Harassment & Abusive Conduct Training

**V**isalia Chamber of Commerce and Pacific Employers, will jointly host a state mandated Supervisors' Sexual Harassment & Abusive Conduct Prevention Training Seminar & Workshop with a continental breakfast on January 21<sup>st</sup>, registration at 7:30am Seminar 8:00 to 10:00am, at the Lamp Litr, Visalia.

RSVP Visalia Chamber - 734-5876  
PE & Chamber Members \$35 - Non-members \$50  
Certificate - Forms - Guides - Full Breakfast  
Future 2015 Training dates: 4-22-15, 7-22-15, 10-21-15



**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.



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION "Four (4) Sick Leave Problems"

**Q:** "What are the big compliance problems with AB 1522, the new Paid Sick Leave Law?"

**A:** The law requires 6 months advance notice of the July 1, 2015 effective date. We have already helped you with the first of the problems with Pacific Employers' new 2015 All-In-One Poster. Problem #2 is the new employee information form, which we have conveniently included with this newsletter and is posted on our website.

Many employers already have a sick leave program that provides time off for health related matters; often with more days than the mandated 24 hours or 3 days per year.

However, **Problem #3** is that the new law requires that every employee must receive no less than 24 hours or 3 days sick leave per year, or the employer must follow the 1 hour earned for every 30 hours worked accrual formula. That accrual rate is the same for full-time, part time and occasional employees.

The 1 hour earned for every 30 hours worked accrual is an earning rate that would provide a 40 hour full time employee with more than 69 hours or more than 8 sick leave days a year!

Since you must either follow the law's accrual rate or see that every employee is provided 24 hours or 3 days of sick leave per year, one of the easiest methods of achieving the new law's requirement is to front-load your sick leave plan with 3 days sick leave at the beginning of the earning year. The earnings year can be the employee's anniversary year, the calendar year or even on July 1 of every year in honor of the plans legal inception.

The front-loaded 3 days may be part of a Paid Time Off (PTO) program or it can be a separate sick leave program. As part of a PTO program, the sick leave use can be limited to just 3 days a year, or the entire PTO accrual.

Since we only have so much room, we will finish this column with **Problem #4**, which is that the Law allows the employee to be in charge of making the decision as to how much sick leave to use. Really? Yes, really! [PE]

## SEMINAR TOPIC TALK WITH DAWN

### 2015 Labor Law Update Seminar



**W**ith the new year comes new laws for businesses! Come hear about the New Sick Leave Law and other changes that will impact you and your business at Pacific Employers' free Labor Law Update Seminar on Thursday January 15th from 10-11:30am at the Tulare-Kings Builders Exchange (1223 S. Lover's Lane in Visalia).

Dave Miller and Candice Weaver will be our presenters. To attend the free seminar please call Pacific Employers at 733-4256. [PE]

## NO-COST EMPLOYMENT SEMINARS

Pacific Employers hosts this Seminar Series at the Builders Exchange at 1223 S. Lover's Lane at Tulare Avenue, Visalia, CA. RSVP to Pacific Employers at 733-4256.

*These mid-morning seminars include refreshments and handouts.*

### 2015 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 15<sup>th</sup>, 2015, 10 - 11:30am**

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

**Thursday, February 19<sup>th</sup>, 2015, 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 19<sup>th</sup>, 2015, 10 - 11:30am**

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

**Thursday, April 16<sup>th</sup>, 2015, 10 - 11:30am**

♦ **Family Leave** - Federal & California Family Medical Leave, California's Pregnancy Leave, Disability Leave, Sick Leave, Workers' Compensation, etc.; Making sense of them.

**Thursday, May 21<sup>st</sup>, 2015, 10 - 11:30am**

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

**Thursday, June 18<sup>th</sup>, 2015, 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 16<sup>th</sup>, 2015, 10 - 11:30am**

**There is No Seminar in August**

♦ **Forms & Posters** - as well as Contracts, Signs, Handouts, Fliers - Just what paperwork does an Employer need?

**Thursday, September 17<sup>th</sup>, 2015, 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 15<sup>th</sup>, 2015, 10 - 11:30am**

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

**Thursday, November 19<sup>th</sup>, 2015, 10 - 11:30am**

**There is No Seminar in December**

New Employee Information Form 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 30 Years of Excellence



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

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.

### MILLIONS IN UNPAID WAGES IN GARMENT INDUSTRY

The U.S. Department of Labor (DOL) has announced that during fiscal year 2014, its Wage and Hour Division (WHD) conducted 221 investigations of employers in Southern California's garment industry and found \$3,004,085 in unpaid wages for 1,549 workers.

The division said that amounted to an average of \$1,900 per worker, which is five times the amount a typical sewing machine operator earns in a week. WHD Administrator Dr. David Weil said the division is engaging in strategic enforcement efforts such as directed investigations and identifying supply chains to combat what he calls a race-to-the-bottom culture. The DOL said minimum wage and overtime violations have historically been high in the garment industry and that investigators have found violations in 89 percent of more than 1,600 cases in Southern California since 2009, leading to more than \$15 million in recovered back wages for nearly 12,000 workers. [PE]

### DRIVERS WIN \$1M IN WAGE & HOUR CLASS ACTION

After a bench trial in a wage and hour class action lawsuit, a California trial court awarded the class of truck drivers nearly \$1 million in damages plus attorneys' fees, litigation expenses, and class representative enhancements to the named drivers. The employer appealed on the ground that federal law preempts the application of California's meal and rest break requirements to motor carriers.

Two truck drivers filed a class action lawsuit against Oakland Port Services Corp., d/b/a AB Trucking, for failing to pay drivers for all hours worked, misclassifying some drivers as unpaid trainees, and failing to provide required meal and rest breaks. The trial court certified a class of drivers who performed work for AB out of its Oakland facility, and the case proceeded to a bench trial.

On May 21, 2013, the trial court awarded the class a total of \$964,557. AB filed a notice of appeal on July 19, 2013. On August 9, 2013, the trial court awarded the drivers \$487,810.50 in attorneys' fees, \$42,106.16 in litigation expenses, and \$20,000 in class representative enhancements. [PE]

### HOME CARE RULE ENFORCEMENT DELAYED

A new rule taking effect January 1, 2015, entitles most direct care workers to receive federal minimum wage and overtime pay protections, but the U.S. Department of Labor (DOL) has announced it won't file enforcement actions against employers violating the new rule until after June 30.

Direct care workers are workers who provide homecare services, such as certified nursing assistants, home health aides, personal care aides, caregivers, and companions. An announcement on the DOL blog in October said the department decided to adopt a time-limited nonenforcement policy to best serve the goals of rewarding hard work with a fair wage while not disrupting innovative direct care services.

For six months, from January 1, 2015, to June 30, 2015, the department won't file enforcement actions against any employer that fails to comply with obligations newly imposed by the rule, and for the next six months (July 1, 2015, to December 31, 2015), the department will exercise its discretion in determining whether to file enforcement actions. [PE]

### Labor Law Seminar

Sick Leave - courtesy of "Big Brother" ♦ 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 15th, 2015, 10am - 11:30am

New laws that affect employers are on their way!

- Paid sick leave ordinances — CA & SF, who's obligated in the state to offer this now?
- The top wage and hour threats here in California, and tips for ensuring compliance

Join us to reiew and discuss changes in the Labor Law landscape. RSVP to 559-733-4256