

### TOP OF THE NEWS

#### Immigration Rallies Affect Employers

**I**mmigration rallies in cities across the country on May 1st drew hundreds of thousands of people in support of immigrant rights. It was anticipated that a substantial portion of the 22+ million illegals as well as their supporters and countrymen now legally in the United States would show up at the rallies.

The Chicago Tribune estimates that more than a million people participated in the marches. While the full impact of the protests is unknown, some businesses reported that they closed for the day as a result of worker shortages or lack of customers the newspapers notes.

The protestors want Congress to approve legislation that would give illegal immigrants a path to citizenship. In the Senate, one piece of legislation that would give undocumented workers a way to earn legal status has stalled.

Organizers of the protests, which they called "A Day Without Immigrants," aimed to draw attention to what the economy would be like without immigrants contributing to it. There was some disagreement among immigrant activists whether a boycott and walkout was the proper route. Some individuals criticized the call for a boycott, saying it would backfire in establishing how many individuals are currently breaking federal law. [PE]

#### Sexual Harassment: Workplace Spanking Victim Wins \$1.7 Million Verdict

**A** Fresno jury has awarded \$1.7 million to Janet Orlando, who charged that she was the victim of sexual harassment and battery after she was spanked with a yard sign on three separate occasions in front of her jeering co-workers at Alarm One Inc., a home security company.

The spankings were part of motivational practices at Alarm One's Fresno office, where Orlando worked. The motivational tactics included having sales teams compete, with the winners poking fun at the losers, including throwing pies at the losers, feeding them baby food, making them wear diapers, and swatting their buttocks with a competitor's yard sign. During the spankings, the sales force allegedly hooted and heckled with "Bend over, baby" and "You've been a bad girl."

The company claimed that Orlando was a willing participant in the motivational meetings, and that she never complained about being spanked. It also contended that Orlando abruptly quit her job because she was upset about being passed over for promotion, and not because of the spankings.

The jury's verdict included \$500,000 in compensatory damages and another \$1.2 million in punitive damages. Alarm One's lawyer said the verdict is excessive. [PE]

### Heat Stress Flyer Enclosed!

#### President's Report

~Dave Miller~

#### Shoot Self – Sue Employer!



**E**mployers often say or do things that embarrass or harm them. Imagine an amazingly embarrassing moment at work, possibly a situation in which you, say, shoot yourself in the foot, figuratively speaking, of course. Then, picture the moment caught on tape and posted on the Internet for millions of people to see.

That's what a Drug Enforcement Administration agent recently experienced, except he actually did shoot himself in the foot (you have to see it to believe it). Now he is suing the DEA, saying the agency "improperly, illegally, willfully, and/or intentionally" allowed a tape of the incident to go public, the Smoking Gun reports.

The story began in April 2004 with DEA agent Lee Paige at a school in Florida, leading a discussion about drugs. He also talked about gun safety and presented what he told the audience members was an unloaded Glock .40 firearm, saying some rappers mention the gun in their videos.

Just as he finished saying he was the only one in the room who was professional enough to carry a Glock .40, the gun fired, wounding Paige in the foot. He continued the presentation for another 2 minutes before leaving the classroom for medical attention. Wow--think of the pain he must have been experiencing!

However, since the videotape of the incident started showing up on TV and on the Internet, he has experienced a new round of great pain and suffering, according to a lawsuit Paige filed against the DEA.

Paige says he has become the target of jokes and ridicule since the tape surfaced. Paige says he has suffered emotional pain, mental anguish, loss of enjoyment of life, loss of reputation, loss of opportunity, loss of money, humiliation, embarrassment, and anxiety.

In the lawsuit, Paige accuses the agency of "improper disclosure" of the videotape.

You can watch the video from the top link on Pacific Employers' Links Web page at <http://www.pacificemployers.com/links.htm> [PE]

Generally, one of the hardest things in the world to do is something twice. — Lance Armstrong

## DISCRIMINATION CASES

### **Bias Lawsuit Against 'Friends' Tossed**

**T**he California Supreme Court has dismissed a sexual harassment lawsuit by a writers' assistant who worked on the production of the television show Friends.

In the lawsuit, Amaani Lyle, who worked on the show for four months before it fired her, alleged that the writers' use of sexually coarse and vulgar language, including the recounting of their own sexual experiences, during writers' meetings amounted to sexual harassment under California law.

However, the court disagreed, basing its opinion on a number of factors. One reason the court said the vulgar language wasn't unlawful harassment was that the Friends production was a creative workplace that focused on generating scripts for an adult-oriented show, a fact that the show's writers say they disclosed to Lyle during the interview process. The court said the vulgar language and discussions about sex helped fuel story ideas, albeit toned down to air in primetime TV.

"Based on the totality of the undisputed circumstances, particularly the fact the Friends production was a creative workplace focused on generating scripts for an adult-oriented comedy show featuring sexual themes, we find no reasonable trier of fact could conclude such language constituted harassment directed at plaintiff because of her sex within the meaning of the California Fair Employment and Housing Act," the court wrote.

Lyle also alleged that the writers made sex-based comments about two of the actresses on the show, which she said created a hostile work environment. She said that writers talked about what they would do sexually with one of the actresses and that one writer talked about a missed sexual opportunity with one of the actresses. She also accused a writer of making a crude remark about one of the actresses' fertility.

However, the court ruled that Lyle failed to provide sufficient evidence that the conduct of the three male writers was sufficiently severe or pervasive to create a hostile work environment.

The court noted the importance of context when looking at sexual harassment lawsuits.

"We do not suggest the use of sexually coarse and vulgar language in the workplace can never constitute harassment because of sex; indeed, language similar to that at issue here might well establish actionable harassment depending on the circumstances," the court wrote. "Nor do we imply that employees generally should be free, without employer restriction, to engage in sexually coarse and vulgar language or conduct at the workplace. We simply recognize that, like Title VII, the FEHA is not a 'civility code' and [is] not designed to rid the workplace of vulgarity." [PE]

## **Documenting Accident Conditions**

**T**hroughout the course of providing services to our clients we are called out to document and investigate on the job accidents. All accidents that occur in the workplace should be documented by the employer very thoroughly.

Regardless of severity, an employer should, first of all, document the location of the accident, documenting should include a brief description of where the accident took place. This is important as there are times when the reported accident actually took place elsewhere. Photographing the location is important.

Sometimes an employee will sustain an injury on a weekend or off time and report it as occurring during work hours and on the employer's property. You can usually make a determination (if in fact) it occurred during work time and on company property by asking the employee to show you specifically where the accident took place on the property. You should also question any other employees to see if they witnessed the accident occurring at the location provided by the injured worker.

Photographing also documents any existing conditions which may at a later date provide supporting evidence that the employee may have been engaging in unsafe methods or been operating equipment improperly. It is always advantageous at a later date to have photographs available for inspection by your counsel or other parties should the accident go "legal."

It is always recommended that you photograph ANY alleged injuries sustained by the employee immediately as there is always the possibility that the injury may be exaggerated at a later date and your documentation could help in mitigating any issues.

Perform interviews of all employees who witnessed the accident and go over their statements to you in writing and have them date and sign the writings. Always confirm the location and conditions at the time of the accident with the witnesses; meaning specific location, time of day, weather, lighting and any other conditions which may have existed at the time. "Conditions" include anything that may have contributed to the accident.

Take the time to open up a file on the accident and plan follow up to assure that following a reasonable amount of time you can close the file. As always, document, document and document.

Next time we'll talk about a very "ugly" racial and sexual harassment lawsuit here in Tulare County. We assisted in the defense of our client and hope that the jury agrees with our position that the employer did not create a "hostile work environment"!

*Rocky Pipkin,*  
Pipkin Detective Agency — Ca. License # 16269  
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## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

#### Employee Responsibility

**Q:** “We advise employees that when we issue them equipment that they will be responsible for any loss or damage they cause or allow to happen. Can we deduct the value of damages from their pay check? How about supervisors?”

**A:** No. The State Labor Commissioner has made it clear that an employer has a duty to insure himself or otherwise accept losses that come from the possible damage or loss of cash, property or equipment. If you deduct from a salaried employee, you run an even greater risk, and that risk is that the employee will lose his exempt status!

#### DOL Nixes Salary Deductions When Exempt Worker Damages Equipment

**I**f an exempt employee damages or loses company-issued equipment, and you decide to dock the person's salary to pay for the loss, you risk the employee's exempt status. That's the conclusion of a new opinion letter from the U.S. Department of Labor (DOL).

The opinion was requested by an employer that issues cell phones and laptops to its exempt employees. The employer asked whether it could impose a fine on exempt employees who damage such equipment used in performing their jobs. In particular, the employer wanted to know whether the fine could be imposed as a salary deduction for the replacement or repair cost, or whether the employee could be required to pay for the damage out of his or her own pocket.

The DOL responded that employees who qualify for the white-collar overtime exemption must earn a predetermined salary, and must receive the full salary for each week in which the employee performs any work. The salary can't be reduced because of variations in the quality or quantity of work. According to the DOL, a fine for lost or damaged equipment would violate this “salary basis” rule. [PE]

#### EMPLOYMENT SEMINARS

**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 Schedule

◆ **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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*Heat Stress Flyer Enclosed!*

**Return Service Requested**



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.

#### **WHAT HOURS CAN TEENS WORK THIS SUMMER?**

Thinking of hiring teens to work this summer? If so, now's the time to get a handle on the rules regarding what hours they can work, so you don't run afoul of state and federal laws.

Between June 1 and Labor Day, 14- and 15-year-olds can work up to 8 hours a day and 40 hours a week, but only between 7 a.m. and 9 p.m.

Sixteen- and 17-year-olds can work up to 8 hours a day and 48 in a week (provided overtime is paid), when school is out. During the summer months, they generally can work between the hours of 5 a.m. and 12:30 a.m.

More info on hiring teen workers is on Pacific Employers Forms Web page for Child Labor Laws. [PE]

#### **TARGET HIT WITH CHILD LABOR FINES**

Target Corporation has paid the U.S. Department of Labor \$92,400 in penalties to resolve charges that the retailer exposed young workers to hazardous machinery, in violation of federal child labor standards. The violations occurred at several New York stores and one in New Jersey. In connection with the resolution, Target also provided the DOL with a plan for how it will ensure full compliance with youth employment regulations in the future.

The penalties grew out of an investigation by the DOL's Wage and Hour Division, which found that 29 minors were operating either power-driven hoisting apparatus or power-driven scrap paper balers, or in some cases, both. Under the DOL's child labor regulations, workers under age 18 are prohibited from operating such hazardous equipment. [PE]

#### **COURT RULES IN ON-THE-JOB RELIGION DISPUTE**

**T**ehama County properly set guidelines for one of its employees who brought his religion to work, the 9th U.S. Circuit Court of Appeals says.

Daniel Berry, who describes himself as an evangelical Christian, sued the Tehama County Department of Social Services, saying it had violated his First Amendment rights by prohibiting him from discussing religion with his clients, displaying religious items in his cubicle, and using a conference room for prayer meetings.

The department did not restrict Mr. Berry from talking about religion with his co-workers or from holding informal prayer meetings in the employee break room, but it said he could not display religious material in his cubicle, where he conducted 90 percent of his business with the department's clients, the court notes.

Mr. Berry was reprimanded after he put a Spanish language Bible on his desk and hung a sign that read "Happy Birthday Jesus" on the wall of his cubicle. In its ruling, the appeals court concluded that the Department has successfully navigated between not respecting its employee's right to the free exercise of his religion and of violating the Establishment Clause of the First Amendment by appearing to endorse religion.

"We conclude that under the balancing test, the Department's need to avoid possible violations of the Establishment Clause of the First Amendment outweighs the restriction's curtailment of Mr. Berry's religious speech on the job," says the unanimous three-judge ruling.

#### **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.*