

TOP OF THE NEWS

Big Name - Big Fine

Fashion retailer Polo Ralph Lauren has agreed to pay \$1.5 million to settle a class action lawsuit charging that the company violated California law by requiring employees to buy and wear Polo Ralph Lauren clothes on the job or face disciplinary action.

The settlement consists of \$1 million in cash and \$500,000 in gift cards. Approximately 5,000 current and former employees at Polo Ralph Lauren retail stores and factory outlet stores in California will share in the proceeds.

The lawsuit, filed back in 2002, alleged that the company's clothing practices violated a state labor code provision mandating that employers pay the costs of buying and maintaining required employee uniforms.

California law states that when you require uniforms, you provide and maintain them. Uniforms are special and unique to the employer, and generally cannot be worn for other work or as street clothing. [PE]

Counterattack Looming Over Workers' Comp

Even as California employers are enjoying sharp reductions in their workers' compensation premiums, efforts are now under way in Sacramento to undo substantial portions of the reforms that generated those savings.

Trial attorneys, labor unions and workers' compensation doctors are mounting an all-out push to increase benefit payouts to injured workers and boost fees for physicians.

Three voter initiatives that would make drastic changes to the workers' compensation system have been submitted to the state Attorney General's Office. All three would raise benefits to injured workers and give them more power to choose their doctors. But two of the measures go much further: they would effectively scrap the entire system by allowing injured workers to sue their employers.

The initiatives were submitted by a registered voter who cannot be located, and all of the traditional interest groups now pushing for reform deny they had any role in drafting the measures.

As a result, business groups and Republican lawmakers are now on the defensive, trying to keep the major reforms enacted two years ago from being undermined, either in the Legislature or at the ballot box.

A coalition of business groups recently formed a committee to oppose any workers' compensation ballot initiative. These business groups credit the 2004 reforms and a set of changes enacted in 2002 with bringing workers' compensation premiums down an average of 38 percent from their 2003 highs. Any attempt to reopen these reforms, they say, could send premiums right back up again.

Instead, they would rather see some minor administrative tweaking of some of the benefit payout formulas to take care of the most egregious cases of slashed payouts. [PE]

Harassment Flyer Enclosed!

President's Report

~Dave Miller~

Staying on Track in 2006

We strive to provide employers a way to stay up with regulations.

New regulations on sexual harassment prevention training have been with us long enough to see that it will become a normal, albeit undesirable, part of life. The 2 hour "Sexual Harassment Prevention Training" is similar to the I-9 Forms and background checks, another time consuming nuisance that is too important to ignore.

Working with the Visalia Chamber of Commerce and other organizations, we have established a regular schedule of quarterly training seminars to provide you with a cost effective way to accomplish this task. Under AB 1825, employers with 50 or more employees must provide their supervisors with biennial sexual harassment prevention training. Supervisors under this law are any employee who has the authority to affect the status of another employee. This includes leadpersons and crew chiefs who may also be doing the same work as their direct reports. Newly assigned supervisors must be trained within 6 months of their selection, and waiting the full 6 months is tempting fate.

The price for this training is very cost effective, as the Visalia Chamber has scheduled a full breakfast and Pacific Employers has

arranged to provide the full two hour, interactive training and all workshop materials for only \$25 per person for members of either organization. Non-members pay \$35 per attendee. See the enclosed flyer for details and RSVP information.

Employers with fewer employees should understand that the new standard for larger employers will also be expected of them as it will now be hard for smaller employers who have a claim against them to justify not protecting their employees by having their supervisors and managers trained.

Pacific Employers will also continue to provide personalized service to its clients by doing both on-site training for the full two hour course for \$300 plus mileage, as well as making arrangements for training in our offices for individuals and small groups.

Give our office a call to review your needs. March 9th is the next quarterly training seminar at the Lamp Liter. Check-in and breakfast beginning at 8:00 AM with the training session ending at 10:30 AM with the issuance of Completion Certificates. [PE]

Beware the barrenness of a busy life. — Socrates

WORKERS' COMP FRAUD POSTED!

Website Lists Names and More

The California Insurance Commissioner has unveiled a new website aimed at combatting workers' compensation fraud by spotlighting workers' comp fraud convictions. The commissioner says the site will be updated monthly with new conviction data.

Insurance Code Section 1871.9 requiring the posting of all workers' compensation fraud convictions on the California Division of Insurance website. You can visit Pacific Employers' website, Links page, and click on the Link of the Month to view the current conviction information.

On the website the Department posts all of the following information for each person convicted of a violation that involved workers' compensation insurance, services or benefits:

- (a) The name, case number, county or court and other identifying information with respect to the case.
- (b) The full name of the defendant.
- (c) The city and county of the defendant's last known residence or business address.
- (d) The date of conviction.
- (e) A description of the offense.
- (f) The amount of money alleged to have been defrauded.
- (g) A description of the punishment imposed, including the length of any sentence of imprisonment and the amount of any fine imposed.

The information required to be posted will be maintained on the department's website for a period of five years from the date of conviction or until the department is notified in writing that the conviction has been reversed or expunged. [PE]

Four Charged in SoCal Workers' Comp Case

Authorities charged a doctor, a chiropractor and two other men with organizing what a prosecutor called the county's largest workers' compensation fraud scam ever.

The four made more than \$2 million since 1999 by billing for medical visits that never happened, prosecutors said.

Dr. Parviz Berjis, 69, and chiropractor Sam Salehi, 36, pleaded innocent in Los Angeles Superior Court to grand theft and conspiring to commit workers' compensation fraud.

Authorities say former County-USC Medical Center welder Leroy Jaramillo, 55, and therapist Bijan Rahmani, 51, were also involved in the alleged fraud. The two were to be formally charged. "This is the largest single case of workers' comp fraud involving the county ever," said Deputy District Attorney Tom Higgins. He added that the fraud may have begun many years ago, but the statute of limitations restricted the case to four years.

Jaramillo submitted a false workers' compensation claim for an injury sustained in the 1980s while working as a welder at County-USC, prosecutors said. He then submitted false mileage bills to medical appointments he never made while Berjis, Salehi and Rahmani billed for the non-visits, prosecutors say.

In one instance, Jaramillo was arrested in Arizona for a drug-related case on the same day a doctor billed for a therapy appointment with him, according to court records. [PE]

SOCCKER INJURY FRAUD

Insurance Commissioner John Garamendi announced the arrest of Alejandro Ruiz Lopez, 26, on felony charges of workers' compensation fraud after an investigation revealed that Lopez allegedly falsified a claim stemming from his broken leg.

Lopez was arrested by investigators from the California Department of Insurance's Fraud Division and booked into the Los Angeles County jail on \$20,000 bail. On July 8, 2003, while working as a carpenter for TR Wurster Construction (TR Wurster), Lopez alleged that he fell off a scaffold and broke his right leg. He reported a work-related injury and, as a result, the State Compensation Insurance Fund (SCIF) paid him \$13,779.22 in benefits.

On October 30, 2003, TR Wurster discovered that Lopez allegedly broke his leg not at work, but while playing soccer. The company immediately alerted SCIF, which subsequently notified the Fraud Division. The case was forwarded to the Ventura County District Attorney's Office, which issued an arrest warrant for Lopez on November 1, 2004. However, after the arrest warrant was issued, Lopez fled the state and took refuge in Oklahoma City, Oklahoma.

"Worker's compensation insurance fraud is a costly crime which robs honest employees and employers," said Insurance Commissioner John Garamendi. "This type of crime will not be tolerated. You will be caught and prosecuted."

Lopez was arrested by Fraud investigators who staked out his scheduled Workers' Compensation Appeals Board hearing. "Mr. Lopez allegedly broke his leg running on the soccer field," said Commissioner Garamendi. "But as this arrest demonstrates, you can only run so far before your crime catches up to you."

Also assisting in the investigation were SCIF's Special Investigative Unit and the Ventura County District Attorney's Office. [PE]

ROOFER COMMITS FRAUD

A roofing contractor was ordered to pay \$1.4 million in restitution and perform 200 hours of community service for cheating on state taxes and workers' compensation premiums.

Kenneth Scott Cooper, 50, was sentenced in Marin Superior Court for filing false statements with the state Department of Insurance, the Employment Development Department and filing false state income tax reports.

Cooper's underreporting began Jan. 1, 1999, when he tried to reduce his workers' compensation premiums by paying workers partially in cash so their paycheck stubs reflected lower wages than they actually earned, according to prosecutors.

The false workers' comp reporting forced Cooper to repeat the false information tax forms. [PE]

Harassment Flyer Enclosed!



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

Oxygen Cylinder Safety

Q: "I understand there are new rules for storing oxygen high pressure cylinders. What are the new rules?"

A: Oxygen cylinders are to be stored a minimum of 20 feet from fuel gas cylinders or combustible materials.

Rules Lacked Specificity

The old regulations lacked specificity in defining terms, such as storing an oxygen cylinder "near" combustible material and what constitutes "sufficient separation distances" from combustible materials (for example, oil and grease).

Beginning in January 2006, oxygen cylinders are to be stored a minimum of 20 feet from fuel gas cylinders or combustible materials.

The 20 foot distance can be reduced if the oxygen cylinder(s) are separated from fuel gas cylinders and/or combustible materials by a half-hour, fire-rated non-combustible barrier at least 5 feet tall.

By this adoption, the Board has made Section 4650(d) consistent with the federal regulations and industry standards. Also, the regulation is now consistent with the California Fire Code which is based on the NPPA consensus standards.

The proposal will require employers to evaluate their oxygen storage situation; and when necessary, either reposition their oxygen storage to meet the minimum 20-foot separation or provide a 5-foot high, half-hour rated fire resistive barrier.

It should be noted this revised regulation in no way affects the historic practice of having an oxygen and acetylene cylinder side-by-side when in use or as set up for welding and cutting operations. [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 SEMINARS

Sponsored by the Small Business Development Center (SBDC) and the Workforce Investment Board at 10:00 am on the 3rd 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

◆ **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 IPPP!** - If you have one or more employees, you must have the IPPP! 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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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.

LAW REQUIRES RECYCLING E-WASTE

Don't Throw Out That Monitor!

A law that took effect February 2006 makes it illegal to toss used batteries, cellular phones, fluorescent lights and other household hazardous materials into the garbage.

The ban on so-called e-waste, instituted by the California Department of Toxic Substances Control, requires customers to take such material to local centers that are specially equipped to handle the potentially toxic agents they contain.

State law requires communities to establish some kind of household waste collection system.

The ban includes products that contain mercury or heavy metals, including all household batteries, mercury thermometers, printers, VCRs, answering machines, radios and computer and television monitors.

E-waste often contains valuable materials such as copper, gold and zinc that can be recycled. Other heavy metals such as lead, mercury and cadmium can pose a threat to public health and the environment.

The Department of Toxic Substances Control said it initially will focus enforcement efforts on illegal dumping and serious violations involving large quantities of waste.

Starting July 1, any retailer that sells cell phones also will be required to collect used cell phones at no charge.

Americans have about 500 million obsolete, broken or otherwise unused cell phones, and about 130 million more are added each year, according to the federal Environmental Protection Agency. Less than 2 percent are recycled. [PE]

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.

KIDNAPPED, BUT NO WORKERS' COMP.

A woman attacked and kidnapped by her boss and his wife is fighting with an insurance company over her workers' compensation claim. The issue is whether the attack was work-related or personally motivated.

Tabitha Sells was working at a Glass Pro auto-glass repair shop Sept. 18, 2004, when her manager and his wife hit her with a bat and threatened her with a gun. She and a co-worker were forced into the trunk of a car, and were freed after it crashed while police chased the couple.

Sells said she has been unable to work since the attack.

"I fought enough that day for my life," Sells said. "Why am I having to fight to have money to live off of?"

Shelly Daugherty Ratliff, 31, and Edward Junior Ratliff pleaded guilty last year to conspiracy to commit murder, kidnapping and assault with a deadly weapon inflicting serious injury. Edward Ratliff, 34, was sentenced to at least 37 years in prison and his wife was sentenced to at least 30½ years.

Sells, 27, filed a claim for worker's compensation. But Glass Pro and its insurance company, the Hartford, denied it.

Sells said it's because the companies believe the attack was personal, motivated by Shelly Ratliff's belief that her husband and Sells were having an affair. She denies having an affair.

The state Industrial Commission will ultimately decide the case. [PE]