

### TOP OF THE NEWS

#### SURPRISE! - ONE OF THREE WORKERS FAKE SICK DAYS

**T**hirty-two percent of workers say they have called in sick when they felt well at least once in the last year, according to a survey by CareerBuilder.com. One-in-ten workers admitted to doing so three times or more.

While some employers said they typically don't question excuses given, others were more skeptical. Twenty-seven percent of hiring managers reported they have fired a worker for calling in sick without a legitimate reason.

The most popular motivator for missing work was the need to relax, according to nearly half (48 percent) of workers. Twenty-four percent of workers pointed to the desire to catch up on sleep while 20 percent cited personal errands. Other top reasons included doctor's appointments (17 percent), plans with family and friends (16 percent), and housework (16 percent).

One-in-four workers said they consider their sick days the equivalent to vacation days and treat them as such. [PE]

#### Racial Harassment Cases Rise Sharply!

**C**ases of racial harassment filed with the Equal Employment Opportunity Commission increased 24% last year, a time of racial turmoil that included the Jena Six controversy and an outbreak of noose displays. The number of racial harassment filings at the commission, which investigates workplace incidents, increased last year, from 5,646 in 2006 to 6,977. The annual figure has more than doubled since 1991.

*"THE NOOSE HAS REPLACED THE N-WORD."*

At the same time, state and city lawmakers have stepped up efforts to make it a crime to intimidate someone with a noose. And the Justice Department, which set up a network to link investigators reviewing noose incidents, has indicted a Louisiana teen on hate crime charges for dangling a noose from his pickup and driving past demonstrators after a protest in Jena, La., in September.

"Nooses are more prevalent," says EEOC chair Naomi Earp. "The noose has replaced the N-word ... as the choice if you want to threaten or intimidate someone." [PE]

### Price List and Promotion Enclosed!

#### President's Report ~Dave Miller~

#### Health Plan Defeated!

**I**n handing Gov. Arnold Schwarzenegger his biggest legislative setback, members of a Senate panel expressed concerns that his plan to cover most Californians without health insurance was inadequately funded and would worsen the state budget crisis.

But the legislation negotiated by the Republican governor and Assembly Speaker Fabian Núñez, D-Los Angeles, was unable to surmount several political hurdles beyond the annual tab, now estimated at \$14.9 billion. A proposed tobacco tax drew high-powered opposition. The fact that raising taxes takes a two-thirds vote in the Legislature made finding financing a complicated exercise.

Republicans never supported the measure. During a yearlong campaign for his No. 1 priority, Schwarzenegger was unable to persuade even one Republican lawmaker to join him. [PE]



#### WHAT GOES UP

**T**he January Pacific Employers newsletter announced an increase in membership fees. Most of our prices have not changed in 25 years!

Now the time has come to make some changes. And a dues increase was announced. 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]

#### Dinner For You?

**P**acific Employers' only enduring promotional campaign has been a very successful one for both Pacific Employers and its clients.

We offer you an unlimited dinner for two at the Vintage Press Restaurant when a firm you recommend to us becomes a members. It is just that simple. *Our clients have always been our best promoters!*

We ask that you just keep up the good work. [PE]

Of two evils, choose neither.

## Court Decisions

### \$1.4 Million Spanking Verdict Reversed

**A** CA appellate court has reversed a \$1.4 million jury verdict in favor of an employee who claimed that she and others were spanked during company sales meetings. According to the California Court of Appeal, since the jury was not instructed that to prevail the employee had to show that the harassment occurred because she was female, the verdict could not stand. *Orlando v. Alarm One, Inc.*

Janet Orlando worked in Alarm One's Fresno office as a field supervisor. Before sales teams went out each morning, the field supervisor led a meeting to motivate the salespeople which involved yelling, chanting, cheering and a general pep rally atmosphere. At other Alarm One offices, these meetings involved singing in front of the group, pies in the face, eating baby food, wearing diapers, and spanking employees with Alarm One or competitor's signs. The Fresno office adopted some of these techniques, including the spanking.

Orlando was spanked a few times during these meetings. On January 14, 2004, the last day on which she was spanked, Orlando and another employee claimed they were injured. Shortly thereafter the office stopped this practice at the morning meetings. Orlando sued Alarm One for sexual harassment, assault, battery, sexual battery, and intentional infliction of emotional distress.

The jury found in Orlando's favor on her sexual harassment and sexual battery claims and awarded her \$500,000 in compensatory damages and \$1 million in punitive damages. The court later reduced the compensatory damages award by \$10,000 (which represented the jury's award for lost wages). Alarm One then appealed this decision.

Since there was conflicting evidence on whether Orlando was subjected to harassment because she was female, and since the jury was not instructed that the sexual harassment must be because of Orlando's gender, the court concluded that the jury may have been misled. The court stressed that the "because of . . . sex" element is essential to a sexual harassment claim under the Fair Employment and Housing Act, and the absence of this information from the instructions may have prejudicially affected the verdict. Thus, the court reversed the judgment and sent the case back to the Superior Court. [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.

### Ariz. Illegal Immigrant Law Upheld

**A** federal judge upheld an Arizona law that prohibits businesses from knowingly hiring illegal immigrants and yanks the business licenses of those that do.

U.S. District Judge Neil Wake dismissed a lawsuit filed by business groups that argued that federal immigration law severely restricts Arizona's ability to punish people who knowingly employ illegal immigrants.

The law won approval last year from the Republican-majority Legislature and Democratic Gov. Janet Napolitano amid frustration over what they said were inadequate federal efforts to confront illegal immigration. Many cities across the country have passed similar measures, though some have been rejected in court.

Business groups including the Arizona Chamber of Commerce and Industry argue the Arizona law unconstitutionally infringes on federal immigration powers. Wake, however, concluded that there is no conflict with federal immigration law, which he said specifically lets states regulate business licensing. "Preservation of that state power was itself part of Congress' careful balancing of policy objectives," Wake wrote.

Businesses that knowingly hire illegal immigrants could face a business license suspension lasting up to 10 days under the new law. Second-time violators would have their business licenses permanently revoked. The law also requires businesses to use an otherwise voluntary federal database to verify the employment eligibility of new workers. [PE]

### DOL Sets New FMLA Date

**T**he President signed a law that amended the FMLA to give the "spouse, son, daughter, parent, or next of kin" of a member of the Armed Forces up to 26 weeks of leave to care for the service member "who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness."

According to the DOL, this provision was effective January 28, the date the President signed the legislation. The agency states that it is working "quickly" to prepare guidance regarding rights and responsibilities under this legislation. In the meantime, employers are required to act in good faith in providing leave under the new legislation. Generally, employers should use FMLA-type procedures (such as substitution of paid leave and notice) as may be appropriate.

Employers should be aware of the expansion of their obligations under the FMLA and should revise their FMLA policies and procedures to include leave as provided in the NDAA amendments. While the DOL has provided a brief reprieve from the "exigency" requirement, the agency likely will issue a definition shortly. [PE]

**Price List and Promotion Enclosed!**



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

**Q: "The "New" FMLA?"**  
*"I have heard that Family Medical Leave Act has gone from 12 to 26 weeks. How big are the new changes to the FMLA?"*

**A:** When President Bush signed into law the National Defense Authorization Act for Fiscal Year 2008, there were provision in the law that amends the federal Family and Medical Leave Act of 1993 ("FMLA") to provide two new types of leave to employees with family members serving in the military.

The FMLA is expanded to provide a maximum amount of time an employee would otherwise be entitled to take off work to care for a family member with a serious health condition from 12 weeks to 26 weeks when the health condition is incurred by a member of the military while in the line of duty on active duty. Employees eligible for this leave not only include the spouse, children and parents of the injured service member but also his or her "next of kin." This leave is available only during a single 12-month period and it is also combined with all other FMLA leaves, limiting FMLA leave for all purposes to no more than a total of 26 weeks of leave during a 12-month period.

This expansion of the FMLA contains the new terms "next of kin" and "covered service member." Apparently in an effort to ensure that someone will be available to care for these service members, employers must now grant time off to eligible next of kin. Next of kin is defined as the "nearest blood relative of that individual."

The NDAA further amends the FMLA to provide that eligible employees are entitled to up to 12 weeks of leave during any 12-month period "because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation."

The expanded FMLA applies to employers with 50 or more employees. California recently passed legislation, AB392, that requires employers with 25 or more employees to give 10 days of leave to employees with spouses on leave from certain types of active military service." [PE]

### 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 April 23<sup>rd</sup>, 7:30am—10:00am, at the Lamp Liter Inn.**

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

Want Breaking News by E-Mail?  
Just send a note to  
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### 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

◆ **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 - 1:30am**

There is No Seminar in December

*Price List and Promotion Enclosed!*

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MANAGEMENT ADVISOR

Celebrating 43 Years!

## *Open House Invitation Below*

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.



*Open House*

**Celebrating 44 Years In Business**

Join Us on April 18th 2:00 - 6:00 PM  
306 N. Willis St., Visalia