

### TOP OF THE NEWS

#### More Cross-Border Trucking Allowed

**U.S. Department of Transportation's Federal Motor Carrier Safety Administration** cleared the second American and second Mexican trucking companies to participate in its Cross-Border Trucking Demonstration Project since the one-year demonstration was launched Sept. 6<sup>th</sup>. San Diego-based IBC, Inc. and Mexicali-based Transportes Rafa have both received authority to make long-haul deliveries in Mexico and the United States, respectively.

“... MAINTAINING SAFETY ON AMERICAN ROADS.”

“We are enforcing tough safety standards at every stage of this demonstration as we tap into this unique opportunity to compete in new markets and increase border trade efficiency,” said John Hill, FMCSA administrator. “There is tremendous potential to reduce costs for American consumers and businesses while maintaining safety on American roads.”

According to FMCSA, thousands of Mexican commercial trucks operate every day in U.S. cities like San Diego and El Paso and last year made more than 4 million crossings into border commercial zones, which extend approximately 20-25 miles into the United States. U.S. commercial trucks, however, have never had the authority to operate in Mexico. Last Week, Stagecoach Cartage and Distribution, of El Paso, made the first trip ever into Mexico as part of the demonstration project. [PE]

#### New GM Agreement Lowers Wages

**General Motors Corp. now has the right to shift a fourth of its union labor force to lower-paying jobs by 2011** under a new agreement with the United Auto Workers.

GM and the union agreed to label “in excess of 16,766” jobs as “non-core” positions that pay about half as much as the earnings of 73,500 current UAW members at the largest U.S. automaker, according to the agreement. The jobs won't provide a full UAW pension or retiree health care.

The new contract addresses GM CEO Rick Wagoner's demand that the union help close a \$25-to-\$30 gap in hourly U.S. labor costs with Toyota and Honda. Hourly pay and benefits for non-core jobs will be about \$28, compared with \$51 for current UAW workers.

“These rates get them very close to the Toyota labor costs,” said an analyst at the Center for Automotive Research in Ann Arbor, Michigan. “It really sets up a mash of the titans” between GM and Toyota.

... PROVIDES FOR A “SPECIAL ATTRITION PROGRAM” ...

The “non-core” ranks may swell as the four-year contract identifies 3,126 jobs now done by outside suppliers that may be brought back to Detroit-based GM under the lower pay scale.

The contract provides for a “special attrition program” to entice workers to leave. People familiar with the plan have said the program will be aimed at workers in non-essential jobs. For a standard 2,080-hour work year, a single, lower-paid worker under the new scale would receive \$58,240 for wages and benefits, compared with \$106,080 for a current UAW employee. [PE]

### 2008 Attendance Record Enclosed!

#### President's Report

~Dave Miller~

#### Judge Blocks No-Match Letters

**A federal judge in San Francisco blocked the Bush administration's attempt to enlist the nation's employers to banish illegal immigrants from the workplace.** Saying the administration's plan “would result in irreparable harm to innocent workers and employers,” U.S. District Judge Charles Breyer barred authorities from threatening to prosecute businesses that fail to fire employees whose Social Security numbers don't match government records.

Breyer's preliminary injunction is likely to keep the proposal on hold until sometime next year. Breyer said unions that challenged the administration's proposal had raised serious questions about its legality and had



shown that legal workers, and their employers, would suffer far greater hardship from immediate enforcement of the plan than the government would incur by a delay.

The injunction is binding until the case goes to trial, a proceeding that is many months away. But the administration is virtually certain to ask the Ninth U.S. Circuit Court of Appeals in San Francisco to overrule Breyer and let the new system take effect while it is being challenged. The court might act on such a request by the end of this year. [PE]

#### SEEMS LIKE ONLY YESTERDAY

**Wasn't it just a couple of months ago** that we were running all over trying to get everyone into compliance with AB1825? That's the law that requires employers with 50 or more employees to provide all personnel who have “Supervisory Authority” a minimum of two hours of Sexual Harassment Prevention Training every two years. Training must include strategies for prevention and discuss remedies for victims of unlawful harassment. Well, we checked the calendar and it has been two years!

If you are due for a re-run of this old favorite and you missed the local event, we are helping the Exeter Chamber of Commerce put on the last public event planned for this year. See pages two and three for date and time. [PE]

You can fool too many of the people too much of the time. - James Thurber

## Supervisors' Sexual Harassment Prevention Training

**Exeter Chamber of Commerce and Pacific Employers, will jointly host a state mandated Supervisors' Sexual Harassment Prevention Training Seminar & Workshop** with a continental breakfast on **November 8th, 7:30am—10:00am**, at the Exeter Chamber of Commerce 101 W. Pine St., in Exeter.

**Early Reservations \$20**

RSVP Exeter Chamber - 592-2919 – \$30 at the door!  
Certificate – Forms – Guides – Breakfast

## NLRB Rulings

### Employer Friendly Rulings

**The National Labor Relations Board (NLRB) has just issued several employer-friendly decisions that will have a continuing importance.** The majority of the five-member Board was appointed by President Bush. The following recent rulings will change the unions' organizing programs.

#### AN IMMEDIATE CHALLENGE TO VOLUNTARY RECOGNITION POSSIBLE

In *Dana Corp. and Metaldyne Corp.*, the Board modified its long-standing recognition-bar doctrine. Since 1966, the NLRB has held that an employer's voluntary recognition of a union based on a card showing of majority support bars the filing of a decertification petition, or an election petition from a rival union, for a reasonable period of time, generally at least six months. During this period, the parties have an opportunity to bargain and enter into a labor contract. Voluntary recognition eliminates the risk of the union losing an election.

"... VOLUNTARY RECOGNITION ... SHOULD NOT BE TREATED THE SAME ..."

In *Dana/Metaldyne*, the Board concluded that the voluntary recognition process should not be treated the same as the choice expressed in a Board-conducted, secret-ballot election. Accordingly, the recognition bar doctrine now provides a 45-day window period for the filing of petitions after voluntary recognition. Specifically, there will be no bar to an election following a grant of voluntary recognition unless (a) affected employees are given notice of the recognition and of their right to file an election petition within 45 days, and (b) no validly supported petition is filed within the 45-day period. Unless these requirements are met, the signing of a post-recognition contract will not bar an election petition.

#### "SALTS" MAY NOT BE PROTECTED

The decision the NLRB rendered in *Toering Electric Co.* makes it harder for the unions to prove that an employer violated the Act by refusing to hire a pro-union job applicant. This situation typically arises when union "salts" — paid organizers — try to infiltrate an employer's workforce and file unfair labor practice charges if they are not hired.

"THE BURDEN THEN SHIFTED TO THE EMPLOYER ..."

Previously the Board's General Counsel had to show that the employer was hiring or had concrete plans to hire, the union applicant had the relevant training or experience, and antiunion animus played a role in the decision not to hire. The burden then shifted to the employer to show that it would not have hired the applicant even in the absence of his union affiliation.

*Toering* adds the new requirement that the union applicant had a "genuine interest" in seeking employment. If the NLRB attorney prosecuting the case shows that the salt really wanted the job, the employer may present evidence to the contrary, for example, that the applicant had refused similar employment in the past, made belligerent or offensive comments on the application, behaved in a disruptive, insulting or antagonistic manner during the application process, or engaged in other conduct inconsistent with a genuine interest in being hired.

*Toering* will make it tougher for union organizers to "salt" a workplace with a result being that unions will engage in more covert forms of organizing, thus requiring greater diligence on the part of employers.

#### PERMANENT STRIKE REPLACEMENTS CAN BE "AT-WILL"

Under the National Labor Relations Act, economic strikers who unconditionally offer to return to work are entitled to immediate reinstatement unless the employer has a legitimate and substantial reason for refusing reinstatement. Such business justification can be shown by evidence that the strikers were permanently replaced in order to continue business operations during a strike.

"... STATE LAW GIVES THE EMPLOYER THE RIGHT TO TERMINATE ..."

In *Jones Plastic & Engineering*, the issue was whether employees hired during a strike on an "at-will" basis — meaning *they can be fired at any time, with or without cause* — could be deemed permanent replacements for striking employees. The Board majority concludes that at-will employment is not inconsistent with employment as a permanent replacement under the Act. It agrees with the General Counsel's argument that "permanent" refers only to an employer's intention to keep replacement employees on the job after strikers unconditionally offer to return to work, while "at-will" merely reminds the replacements that state law gives the employer the right to terminate any employee with or without cause.

*Jones* should give employers greater flexibility in determining how they will continue operations during a labor related work stoppage. [PE]

**Note: Your 2008 All-In-One Poster in the Mail Next Month!**



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

#### How to Investigate

**Q:** "You recently spoke of investigating complaints. What is the best procedure?"

**A:** Employees should be informed of their rights to complain and the process that they can expect to be followed. Harassment complaints are even more problematic.

An employee handbook is an excellent way to inform employees about their rights and responsibilities regarding harassment and to explain to them what procedures can be undertaken to begin the investigation process. Employees should sign acknowledgment forms for receipt of the policy prohibiting harassment, to refute any allegations that they never received the policy during future litigation.

Employers must take complaints seriously but should not assume that the allegations are true or false. An employer's response should include the following components:

Inform the claimant that an investigation will be conducted, will begin promptly, and will be completed in a timely fashion.

Thank the claimant for conveying concerns, and state that the company does not tolerate harassment or discrimination.

Explain that the company needs to gather information, and that no determinations can be made until all information is gathered.

Do not promise confidentiality. Instead, state that all information provided must be investigated, and that it will be kept confidential to the extent possible.

Once an investigation begins, it should be kept confidential to the extent possible. Because interviews with others are necessary, absolute confidentiality cannot be promised.

If the company determines that the complaint has merit, disciplinary action up to and including termination of the alleged harasser may be appropriate. Employment law counsel can assist HR personnel to determine the correct course of action.

The company should report back to the complainant that the matter has been investigated and the company has taken appropriate action. However, counsel should caution the HR personnel that it may not be appropriate, depending on the circumstances, to communicate to the complainant the specific disciplinary action taken in order to minimize the potential for litigation from the alleged harasser. [PE]

Want Breaking News by E-Mail?

Just send a note to

[peinfo@pacificemployers.com](mailto:peinfo@pacificemployers.com)

Tell us you want the News by E-Mail!

### Final Supervisors' Sexual Harassment Prevention Training Seminar for 2007

**C**alifornia Assembly Bill 1825 (AB 1825) requires employers with 50 or more employees to provide all personnel who have "Supervisory Authority" a minimum of two hours of Sexual Harassment Prevention Training every two years. Training must include strategies for prevention and discuss remedies for victims of unlawful harassment.

The Exeter Chamber of Commerce and Pacific Employers, will jointly host a state mandated Supervisors' Sexual Harassment Prevention Training Seminar & Workshop with a continental breakfast on November 8th, 7:30am—10:00am, at the Exeter Chamber of Commerce 101 W. Pine St., Exeter.

**Early Reservations \$20**

**\$30 at the door!**

RSVP Exeter Chamber - 592-2919

**Certificate – Forms – Guides – Breakfast**

### EMPLOYMENT SEMINARS

**T**he Small Business Development Center and Pacific Employers will host the 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.

#### 2007 Topic Schedule

Last 2007 Seminar!

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

*Thursday, November 15th, 2007, 10am - 11:30am*

**There is No Seminar in December**

These morning seminars are free of charge and include refreshments and handouts.



**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.

**Pacific Employers**  
306 North Willis Street  
Visalia, CA 93291  
559 733-4256  
(800) 331-2592  
www.pacificemployers.com  
email - peinfo@pacificemployers.com

Return Service Requested

PRSR STD  
U.S. Postage  
PAID  
VISALIA, CA  
Permit # 441



Want Breaking News by E-Mail?  
Just send a note to  
[peinfo@pacificemployers.com](mailto: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.

### Business Cited, Fined For Violation!

A \$17,000 fine was ordered for Todd Feuer, 54, owner of CS Maintenance, for being unable to show proof of workers' compensation insurance to investigators, according to a news release from the San Bernardino County District Attorney's Office.

The county's investigators performed random compliance inspections on Sept. 6, when they visited businesses in Chino to ensure business owners provided workers' compensation insurance coverage for their employees. Feuer's janitorial/housekeeping business was unable to provide proof of the insurance upon a return visit from investigators on Sept. 14, authorities said.

The Department of Labor's fines are \$1,000 per employee, and along with the fine, a stop-work order was issued against Feuer's business. [PE]

### Pay Raises Will Average Below 4%

More than 6 in 10 of human resource professionals do not expect to receive a raise higher than 4 percent in 2008, according to a recent *Compensation.blr.com* poll.

When asked "Will you receive a raise higher than 4 percent in 2008?" sixty-three percent of respondents reported that they would not receive a raise higher than 4 percent, while just 22 percent believed that they would. Meanwhile, 15 percent of respondents said that they were not sure what type of raise to expect.

**BLR's 2008 Pay Budget Survey** projects that average merit and general increases will remain below 4% in 2008. Only employees in the Far West region of the country (including Alaska, California, Hawaii, Oregon and Washington) reported planned merit increase above 4 percent. [PE]

### FREE & UNLIMITED CONSULTATION?

*Yes FREE! A benefit of Pacific Employers' Membership is Free, 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.*

### Delano Farm Labor Contractor Heads To Prison

Serafin Rodriguez Mendoza, 49, of Delano, has been sentenced to 24 months in prison and ordered to pay restitution of \$636,876 after pleading guilty to conspiracy to willfully fail to make required employment tax payments.

Mr. Mendoza admitted that he withheld employment taxes from farm laborers he hired to work at various farms within in the area, but did not forward these withholdings to the IRS as required by law, according to prosecutors, this went on for more than four years. During this time he and his ex-wife, Rosa Lopez Mendoza, owned and operated Central Valley Ag Services, a farm labor contracting business based in Delano.

Instead of handing the money over to the tax collector, Mr. Mendoza used it to buy various properties and for personal expenses, prosecutors say. [PE]