

TOP OF THE NEWS

Minimum Wage to Hit \$8

California to raise minimum wage to highest in US!

California Gov. Arnold Schwarzenegger and state lawmakers reached a deal to hike the minimum wage to the highest level in the nation. The **minimum wage would rise to \$8 an hour** in two steps. It would be an increase of \$1.25 an hour.

Once the agreement is signed into law, the minimum wage will increase by 75 cents in January 2007 and by 50 cents in January 2008.

The agreement between the Republican governor and the Democrat-led legislature's leaders would increase California's minimum wage by \$1.25 over the next year and a half to \$8 an hour with an increase of 75 cents an hour next January and a rise of 50 cents an hour the following January.

The new wage would be 25 cents more than initially offered by Schwarzenegger, who vetoed previous bills to hike the state's minimum wage. In exchange, Democrats dropped demands the

wage automatically adjust upward with inflation changes.

Schwarzenegger, a fiscal conservative and ally of business groups concerned about the cost of doing business in California, said the state economy had recovered and companies could afford to pay minimum-wage workers more.

Business groups and labor unions were not pleased by the agreement, which Democratic lawmakers could pass without any votes from minority Republicans.

The deal replaces two earlier proposals – one by the Legislature which would have increased the minimum to \$7.75 an hour but tied it to the cost of living so future increases would be automatic, and the other by the governor to increase the minimum to \$7.75 an hour with no automatic increases.

The California minimum wage is currently \$6.75 per hour, a level it reached four years ago. It's the same as in Hawaii but lower than the minimum wages in Oregon, Washington and Alaska. The federal minimum is \$5.15 per hour. [PE]

New DFEH Poster Enclosed!

President's Report

~Dave Miller~

Poster Time Again



Every year at this time we begin putting together our All-In-One Poster that will be mailed out to you in December. And that represents a bit of a challenge as most of the agencies do not let us know in advance, what will be changed, or when a new poster will be forthcoming.

One newly revised poster that will soon be available from the California Department of Fair Employment & Housing is the "Discrimination and Harassment in Employment are Prohibited by Law" posting. The changes are subtle, but reflect the constant changes that are being made to the way we must look at discrimination in the workplace.

The best change they made, for those who look for such things, is that it is now very easy to spot the new poster since they moved the state seal from the bottom of the poster to the area just below the masthead of the new poster. We have enclosed a copy of the new poster in this month's newsletter and as you can see by the position of the little state seal, it is the new one.

Seldom do they remove language from a poster, but the first substantive change was to remove a paragraph that stated the laws "Forbid any person to interfere with efforts to comply with the act. Permit employers to file complaints against workers who refuse to cooperate with the provisions of the law. Authorize DFEH to work affirmatively with cooperating employers to review hiring and recruiting practices in order to expand equal opportunity." Apparently they no longer permit employers to file

against uncooperative employees or work with employers to review hiring or recruiting practices.

New sections were added that provide as follows:

- Require employers with 50 or more employees and all public entities to provide sexual harassment prevention training for all supervisors in accordance with AB 1825.
- Require employers to reasonably accommodate an employee or job applicant's religious beliefs and practices. *Possibly an oversight, it is surprising that this was not part of the previous poster.*
- Prohibit retaliation against a person who opposes, reports, or assists another person in opposing unlawful discrimination.

The DFEH restated the section on employment agencies to say that employment agencies refuse discriminatory job orders, and prohibit employers and employment agencies from making discriminatory pre-hiring inquiries or publishing help-wanted advertising that expresses a discriminatory hiring preference.

And finally, the DFEH updated the poster to reflect the new statute of limitations for victims who are under the age of 18, to not later than one year of that person's eighteenth birthday.

This poster will be part of the All-In-One Poster you will receive before the first of the year. [PE]

Worry is a misuse of the imagination.
— Dan Zadra

Court Decisions Personal Use Not Protected

Employees should have no expectation of privacy when they use their employer's computers to surf the net or for other personal use, the Ninth U.S. Circuit Court of Appeals has ruled.

"Social norms suggest that employees are not entitled to privacy in the use of workplace computers, which belong to their employers and pose significant dangers in terms of diminished productivity and even employer liability," says the 3-0 opinion, written by Judge **Diarmuid O'Scannlain**.

The ruling is in an appeal brought by **Jeffrey Ziegler**, then the operations director of Frontline Processing where the company's IT department discovered that someone using **Mr. Zeigler's** computer had downloaded what they felt were photos depicting child pornography. The company called the FBI and copied the contents of the computer's hard drive, giving the copy to the FBI.

Mr. Ziegler was arrested and convicted in a plea agreement of receiving obscene material. He appealed, saying the monitoring of his use of the computer was a violation of the Fourth Amendment. "We do not hold that company ownership of the computer is alone sufficient to defeat an expectation of privacy," the appeals court says. "As always, the issue depends on what expectations may reasonably coexist with that ownership."

In the case of Frontline, employees were told of the company's monitoring efforts through training and an employment manual, and they were told that the computers were company-owned and not to be used for activities of a personal nature.

"As such, **Ziegler** had no objectively reasonable expectation of privacy in his workplace computer and thus no standing to invoke Fourth Amendment protection," the ruling says.

The Fourth Amendment reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." [PE]

Court Sides With IBM on Pensions

Afederal appeals court ruled **International Business Machines Corp. did not discriminate** against older workers when it changed to a cash-balance pension, overturning a lower court decision in the closely watched case.

The case involved 140,000 employees who were affected when IBM converted to a cash-balance pension in 1999 and had sought to force IBM to make up for what they lost. In 2003, a federal judge agreed that the plan amounted to age discrimination because it unfairly penalized older employees.

The Seventh District U.S. Court of Appeals reversed the decision. "All terms of IBM's plan are age-neutral," the judges wrote. "... Removing a feature that gave extra benefits to the old differs from discriminating against them."

The appeals court's decision will be studied closely by other companies with cash-balance plans who feared that their decisions to change their pension plans could trigger a flood of lawsuits.

Cash-balance pensions, also known as hybrid plans, are a form of defined-contribution pension plan, but the two differ slightly: The final monthly benefit is determined by the growth of a hypothetical pot of money, which the employer added to each year during the worker's tenure, whereas defined-benefit plans tend to be more heavily swayed by the worker's tenure and salary in their final few years, which tend to be higher.

A traditional plan typically multiplies years of service by average salary and therefore escalates rapidly in value in later years. In contrast, a cash-balance plan grows by small annual increments, based on a worker's pay.

Most employees whose companies convert from a traditional pension to a typical cash-balance plan would have been better off with the original plan, according to a 2005 Government Accountability Office report. The GAO report said the impact of the conversion depended on the generosity of the cash-balance plan. Younger, more mobile workers usually benefited while older workers were more likely to experience a loss, particularly if they were close to retirement age. [PE]

YOU WON'T BELIEVE THIS ONE!

This summer we received a call from what I sometimes refer to as our most "proactive" H/R manager. This young man has taken an "out of control" work force (Workers' Comp claims) and reduced the annual pay-out from six figures to well below the average for a company his size.

In an excited voice, he explained that a previous employee who had gone out on a Workers' Comp claim several years ago, had recently shown up at the employer's doorstep applying for a job. The kicker? Under a new name! Luckily, a former co-worker recognized her as the individual who had left on a Workers' Comp claim.

After a few phone calls, the H/R manager found out that the claim was still open, (under her real name) however, the District Attorney's Office had filed a (4) count Felony Workers' Comp fraud complaint against the claimant. Apparently, their carrier at the time had performed a sub rosa fraud investigation on the claimant and had turned over the case to the DA's office for prosecution.

The H/R manager requested that we track the claimant down and effectuate an arrest. After two days of surveillance we found, ID'ed and arrested the claimant. Literally, kicking and screaming! We found out that the claimant had several thousand dollars, numerous fake id's and identity theft paraphernalia in her possession! The DA investigator added additional Felony charges.

The employer, although very happy that this individual was not going to be able to possibly file another claim, just could not believe that this person attempted to get rehired while receiving benefits on a fraudulent claim. It happened. Hopefully, this individual will receive a lengthy sentence for the crimes committed. See you next month!

Rocky Pipkin,

Pipkin Detective Agency — Ca. License # 16269

www.pipkindetectiveagency.com

New DFEH Poster Enclosed!



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

NEW HEAT ILLNESS PREVENTION

Q: "I have been contacted by my Workers' Comp carrier and advised to incorporate a heat stress written plan into my safety program. What is that all about?"

A: In presenting their new Heat Stress regulations, Cal/OSHA "encouraged" employers to integrate their heat illness prevention procedures into their Injury and Illness Prevention Programs (IIPPs). Your Workers' Comp carrier recognized this "encouragement" for what it was, a demand that you make it part of your written program.

New Cal/OSHA Standards

The new Heat Illness Prevention Standard requires all employers with outdoor worksites to take 4 basic steps to prevent heat illness:

- Provide heat illness prevention training to all employees, including supervisors.
- Provide enough fresh water so that each employee can drink at least 1 quart per hour if they want to, and encourage them to do so.
- Provide access to shade for at least 5 minutes of rest when an employee believes he or she needs a preventative recovery period.
- Develop and implement written procedures for complying with the heat illness prevention standard.

This new law also requires an employer's heat illness prevention procedures to be in writing and made available to employees and to representatives of Cal/OSHA upon request. These written procedures must include:

- How the employer will comply with the heat illness standard requirements.
- How the employer will respond to symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.
- How the employer will contact emergency medical services, and if necessary, how employees will be transported to a point where they can be reached by an emergency medical service provider.
- How the employer will ensure that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders.

If you need help in including the required language in your Written Safety Program, the staff at Pacific Employers can help you comply.

[DE]

Breaking News by E-Mail?

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

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

Sexual Harassment Prevention Training

THIS MONTH!

The Visalia Chamber of Commerce, in cooperation with Pacific Employers, on **September 20th, 8:00am—10:30am**, at the Lamp Litter Inn in Visalia, will present the state mandated **Supervisors' Sexual Harassment Prevention Training Seminar & Workshop** with full breakfast. Registration flyer enclosed. Call the Visalia Chamber - 734-5876 for reservations. \$25 for Pacific Employers and Chamber members Certificate - Forms - Guides - Full Breakfast

◆ **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 - Judge Gary L. Paden** will be our presenter in October. He will bring us valuable information on Business Ethics and what an employer should do in order to avoid court action.

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.



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.

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New DFEH Poster Enclosed!

Pacific Employers
MANAGEMENT ADVISOR

Celebrating 41 Years!

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.

Overtime at Rent-A-Center

Rent-a-Center Settles Wage/Hour Suits

It's going to cost Rent-A-Center Inc. at least \$4.95 million to settle lawsuits over its not paying non-management employees overtime in accord with California law.

The Plano, Texas-based company, which has stores throughout the Central Valley, announced the tentative agreement.

The money would go to 6,000 to 6,250 current or former employees. In the event there are more than 6,250 class members, the company has agreed to increase the settlement fund by \$750 per person in excess of 6,250.

The lawsuit contended that Rent-A-Center worked the plaintiffs "off the clock." In making the settlement, the company stressed it was not admitting that it had done that.

When the suit was filed in Los Angeles County Superior Court, Rent-A-Center (NASDAQ: RCII) operated more than 150 stores in California.

As a result of the settlement, Rent-A-Center says it anticipates recording a charge in the third quarter of this year to account for the settlement amount and attorneys' fees. The terms of the prospective settlement are subject to the parties entering into a definitive settlement agreement and obtaining court approval. [PE]

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.

STATE TO TRACK HEAT-RELATED DEATHS, ILLNESSES

Somewhere between 130 and 140 people died in California's July heat storm, based on media reports. There is no final, official, figure from government.

A federal grant to the California Department of Health Services may end such uncertainty when the next blanket of heat envelops the state. The five-year grant, worth up to \$4.5 million from the federal Centers for Disease Control and Prevention, will be used to track deaths and illnesses related to increased temperatures and global climate change.

"The tragic deaths and illnesses during our most recent heat wave exemplify how high temperatures can pose a serious health threat for Californians," says state Public Health Officer Dr. Mark Horton. "Along with heat-related illnesses and deaths, we will be tracking other health conditions expected to increase as the state gets hotter."

According to Paul English, principal CDHS environmental health investigator for the study, health risks will increase with continued population growth and development in the hottest regions of the state, along with increased greenhouse gas emissions.

Motor vehicle exhaust is one of the largest sources of greenhouse gases, such as carbon dioxide, according to Mr. English. These gases increase global warming by trapping sunlight and heat and also increase levels of ground-level ozone that can exacerbate illnesses, such as asthma, he says.

California has the largest greenhouse gas emissions of any state in the United States, emitting roughly 500 million metric tons annually. [PE]