

TOP OF THE NEWS

Narrowed Motor-Carrier Exemption

Under-the-radar Congressional action in 2005 substantially limited the federal Fair Labor Standards Act's Section 13(b)(1) "motor carrier" overtime exemption. This exemption applies to drivers, driver's helpers, loaders, and mechanics for whom the U.S. Transportation Secretary can set qualifications and maximum service hours.

Beginning with a mid-August 2005 transportation-law amendment, the exemption was no longer available as to vehicles below a threshold of 10,001 lbs. gross-vehicle-weight or weight-rating (except for some transportation of hazardous substances and for vehicles designed for certain kinds of multiple-passenger transportation). Before this change, many employers had used the exemption in situations involving lighter vehicles, like automobiles, small trucks, SUVs, and compact vans.

There was some effort to undo the change after the amendment's full ramifications became clear. Perhaps because of this, for nearly two years the U.S. Labor Department appears not to have been enforcing the narrowed version of the exemption. Now, that will no longer be the case.

The DOL has now officially advised its field staff that the exemption can apply only to employees performing

exempt work involving the more-limited kinds of vehicles. It's not clear whether officials will reach back to August, 2005, with respect to situations pre-dating the DOL's recent announcement, such as in pending investigations. It is at least conceivable that the DOL will instead enforce the change only prospectively (but individuals can still make claims for the past, whatever the DOL does).

California wage-hour laws also provide for exemptions that mirror, incorporate, or are otherwise based upon the FLSA's motor-carrier provision. It is possible that the August 2005 change affected those exemptions, as well. [PE]

If you have questions about either the federal motor-carrier exemption or any state version, contact Pacific Employers.

9.4 Million Drug Users Hold F/T Jobs

Most of the nation's approximately 16.4 million current illicit drug users and approximately 15 million heavy alcohol users hold full-time jobs and are affecting productivity, according to a new study by the Substance Abuse and Mental Health Administration.

According to the study, unemployed people had higher percentages of current illicit drug use and heavy alcohol use than those with full-time, part-time, or other employment statuses. But because full-time workers constitute about two-thirds of the 18- to 64-year-old population, the actual number of those using drugs was higher among the full-time workers. [PE]

Safety Seminar Flyer Enclosed!

President's Report

~Dave Miller~

Responding To A Cal/OSHA Inspection!



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. This year our emphasis will be on safety as we bring to you the experts in the field. Sierra Safety Services will present a program that provides you with the information you will need when Cal/OSHA comes to visit.

An accident, disgruntled employee or just a random act by the agent in the neighborhood, can trigger an inspection. Because Cal/OSHA inspectors won't give you a warning, the best way to prepare for an inspection is to be in compliance. In the event that an inspector does come knocking, it helps to have a plan in place for how to manage the visit. Our October speaker will give you the information you need to be ready for any eventuality. [PE]

Immigration Crackdown?

Employers across the U.S. are preparing to fire workers with questionable Social Security government identification numbers to avoid getting snagged in a Bush administration crackdown on illegal immigrants.

The Department of Homeland Security is expected to soon make public, new rules for employers notified when their worker's name or Social Security number was flagged by the Social Security Administration.

The rule, as initially drafted, requires employers to fire people who cannot be verified as a legal worker and cannot resolve within 60 days why the name or Social Security number on their W-2 doesn't match the government's database.

Employers who do not comply could face fines of \$250 to \$10,000 per illegal worker and incident.

The Social Security Administration has sent "no match" letters to workers and their employers notifying them of the information discrepancies for years. Its goal has been to make sure money withheld from a person's paycheck is credited to the correct worker, however, under the new law, those who do not comply with the new rule could be deemed as knowingly hiring an illegal worker. [PE]

Wit is educated insolence. —
Aristotle

Labor News

Garage Door Company Shut Down

State investigators shut down a Visalia garage door and insulation company and arrested its owner after determining that he was working under the contractor's license of a man who had died.

Harvey Torgeson, 60, purchased Tulare County Acoustical and Insulation Company from Harold Haynes in March. Haynes, who operated the business at 939 E. Douglas Ave. with a valid contractor's license since 1967, died that month from natural causes, according to a report from the Tulare County District Attorney's office. His license expired at the end of that month.

"TORGESON ADVERTISED THAT HE HAD A STATE LICENSE . . ."

While employees of contractors can work under their boss' license, Torgeson was not an employee of Haynes. He was required to get his own license from the Contractors State License Board, Assistant District Attorney Don Gallian said. *"But he never did,"* Gallian said.

Instead, Torgeson advertised that he had a state license and told his customers he was licensed, giving them Haynes' license number, Gallian said. He did not attempt to obtain a license in his own name, said Rick Lopes, spokesman for California's Department of Industrial Relations.

Torgeson also is accused of not providing workers' compensation insurance for 20 employees.

Attempts to contact Torgeson Friday were unsuccessful. Gallian said his office was notified about the state investigation Tuesday. He said he doesn't know how the illegal activity was uncovered.

The complaint against Torgeson was not generated by a customer, Lopes said, and there was no evidence that Torgeson and his company did shoddy work. He did, however, have "an unfair business advantage at the very least," Lopes said.

Authorities served a search warrant at Torgeson's business Thursday and arrested him on suspicion of fraudulent use of another's license, illegal advertisement, unlicensed contracting and failure to secure workers' compensation insurance. [PE]

Appellate Court Affirms Ruling

Tucoemas Federal Credit Union in Visalia must pay the full \$3.2 million judgment against it and cannot hide behind federal rules, says the 5th District Court of Appeal in Fresno.

The original judgment included \$1.2 million in punitive

damages against the credit union plus \$7000.00 in punitive damages against the CEO, Linda Reese.

"CANNOT CLAIM SOVEREIGN IMMUNITY"

While the compensatory part of the judgment was paid, an appeal was filed on the punitive damages. The appellate court on Thursday affirmed the full judgment and awarded costs to Kim McGee, the credit union's former vice president of lending who brought the suit, with Fresno attorney Peter Bradley as her counsel.

The decision was certified for publication, which means it can be cited as case law in future lawsuits.

The decision will affect federal credit unions throughout the nation that claim that they should not be liable for punitive damages no matter how they treat their employees because they claim they are an entity of the federal government and that sovereign immunity should apply.

Ms. McGee, a 17-year employee, had been diagnosed with breast cancer and underwent surgery and an aggressive treatment of chemotherapy and radiation.

Her lawsuit contended that the credit union refused to provide her with medical accommodation and threatened to fire her if she needed more than four months to recuperate.

Ms. McGee said she tried to meet the demands of her boss but was demoted to a part-time position requiring greater physical activity while she was still undergoing cancer treatment, her pay was slashed in half and her medical insurance coverage was canceled. The trial court's jury found that Tucoemas Federal Credit Union and CEO Reese engaged in the conduct with malice, oppression or fraud, thus awarding the punitive damages. [PE]

Paper Outsources Jobs To India

The Fresno Bee has become the first daily newspaper in the Central Valley to send some of its jobs overseas.

The paper, owned by McClatchy Company (NYSE: MNI) says seven advertising production jobs, out of 31, will now be handled by workers in India.

Those holding the positions in Fresno will be offered other jobs in the company, or, failing that, be terminated, the Bee says.

The deal is with Express KCS LLC of San Jose, which has production facilities in New Delhi. Express notes that it handles some production aspects for at least five other California newspapers.

McClatchy owns four daily newspapers in the Central Valley (the Fresno, Modesto and Sacramento Bee papers plus the Merced Sun-Star) and is the nation's third largest newspaper publisher in terms of total circulation. [PE]

Safety Seminar Flyer Enclosed!



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

Threats of Violence

Q: “One of our employees’ boyfriend has threatened her at work and has sent chills through the rest of the crew. What are our options?”

A: Take the report of threats and the safety of your employees seriously. A recent California appeals court ruling stated that employers must take reasonable steps to address credible threats of violence in the workplace.

In this case, *Franklin v. The Monadnock Co.*, the court found that California Labor Code § 6400 et seq. generally requires employers to provide a safe and healthful place of employment for employees and to take adequate measures to ensure employees’ health and safety. Similarly, California Code of Civil Procedure § 527.8 provides employers with an injunctive remedy to address “unlawful violence or a credible threat of violence” by any individual, including by any employee against a coworker, in the workplace. When read together, the court found that these statutes established an explicit public policy requiring employers to provide a safe and secure workplace, including a requirement that employers take reasonable steps to address credible threats of violence in the workplace. The court ruled that a credible threat is one that an employee “reasonably believes will be carried out, so as to cause the employee to fear for his or her safety or that of his or her family.”

This case illustrates the importance for employers to take seriously any complaint of possible workplace violence or threat of violence. Employers should ensure that they have developed policies addressing possible violence in the workplace and a procedure for employees to raise such complaints. Employers should promptly investigate such complaints and involve law enforcement where necessary.

Further, because this case involved a claim of wrongful discharge following a complaint of threats, it also illustrates the need to carefully document the legitimate, non-retaliatory reasons for terminating employees who have made internal or external complaints about safety [PE]

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

EMPLOYMENT SEMINARS

The 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.

Sexual Harassment Prevention Training

California 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.

On Wednesday, October 17th, 7:30am registration & breakfast with program 8:00am thru 10:00am, at the Lamp Litter Inn in Visalia, the Visalia Chamber of Commerce, in cooperation with Pacific Employers, will present the state mandated Supervisors, Sexual Harassment Prevention Training Seminar & Workshop with full breakfast.

Call the Chamber at 734-5876 for reservations \$25 for Pacific Employers and Chamber members.

2007 Topic Schedule

◆ **Record Keeping** - Forms, Posters, Signs, Handouts, Fliers - Just what paperwork, posters, flyers and handouts does an Employer need?

Thursday, September 20th, 2007, 10am - 11:30am

◆ **Guest Speaker Seminar** - Sierra Safety Services will present a program that provides you with the information you will need when Cal/OSHA comes to visit.

Thursday, October 18th, 2007, 10am - 11:30am

◆ **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

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



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

Printer 'Pollution Dangers' Cited

The tiny particles emitted from some home or office laser printer are as dangerous to human health as inhaling cigarette smoke, according to a new study by Queensland University of Technology in Brisbane, Australia.

The study, which was conducted by Lidia Morawska from QUT's International Laboratory for Air Quality and Health, found that out of 62 laser printers tested, 17 were "high particle emitters." She says these printers were releasing potentially dangerous levels of tiny toner-like material into the air.

Hewlett Packard Co. contends that testing of ultrafine particles is a very new scientific discipline. "There are no indications that ultrafine particle (UFP) emissions from laser printing systems are associated with special health risks," the company responded.

"Currently, the nature and chemical composition of such particles - whether from a laser printer or from a toaster - cannot be accurately characterized by analytical technology.

"Most of the particles detected in the study were ultrafine particles," says Ms. Morawska. "Ultrafine particles are of most concern because they can penetrate deep into the lungs where they can pose a significant health threat.

"The health effects from inhaling ultrafine particles depend on particle composition, but the results can range from respiratory irritation to more severe illness such as cardiovascular problems

or cancer."

The study, conducted in a large open-plan office building, found indoor particle levels in the office air increased fivefold during work hours due to printer use. [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.

Bakersfield Paint Maker Settles with EPA

Ennis Paint Inc. is paying the U.S. Environmental Protection Agency \$13,900 for failing to report releases of toxic chemicals by its Bakersfield plant.

The plant makes paint used in marking roads and highways. Ennis is privately held and based in Ennis, Texas, a suburb of Dallas.

According to the EPA, Ennis Paint failed to submit a "timely, complete, and correct report detailing the amount of methanol released at its facility in 2005."

Ennis corrected the violation within two days of its discovery, the EPA says.

Short term exposure to methanol may result in blurred vision leading to blindness or permanent motor dysfunction. Long term inhalation or oral exposure may result in dizziness, insomnia, nausea, and blindness in humans. [PE]