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Pacific Employers

MANAGEMENT ADVISOR

Winter 2019
 Over 50 Years of Excellence!



WHAT'S NEWS!

Walmart Agrees to Pay \$65 Million for Making Cashiers Stand

Walmart has agreed to pay \$65 million to resolve a class action lawsuit that accused the nation's largest retailer of refusing to provide cashiers with seating while they worked. Nearly 100,000 current and former Walmart cashiers in California had joined the suit, claiming Walmart's actions violated state law.

The case had been ongoing for nearly a decade, and was headed for trial before the parties reached a settlement which must be approved by a federal judge.

The cashiers claimed that Walmart violated a 2001 California wage order specifying that employees must be provided with seats "when the nature of the work reasonably permits." In its defense, the company said that the nature of the job did not permit cashiers to sit down because of the need to greet customers and bag items. It further contended that cashiers are "less efficient" when they sit down.

While Walmart did not admit to wrongdoing, as part of the settlement it did agree to make stools available to its California cashiers who request them.

In 2016, the California Supreme Court ruled in favor of CVS and JP Morgan Chase employees in a similar class action, ordering the companies to give clerk-cashiers and bank tellers the option of sitting. Writing for the Court in that case, Justice Carol Corrigan said, "There is no principled reason for denying an employee a seat when he spends a substantial part of his workday at a single location performing tasks that could reasonably be done while seated, merely because his job duties include other tasks that must be done standing."

The California High Court also acknowledged that the employer's legitimate business need that a job must be performed while standing should be given due weight. But it noted that an employer's mere preference for standing is not a relevant "business judgment." [PE]

2019 California Minimum Wage Poster Arrives!

The new Pacific Employers "All-in-1" Poster for 2019 in English has been mailed to all our clients and extra copies of both the English and Spanish posters are available at our office for posting in all areas where they need to be seen by employees during their workday.

Right before the New Year and after the printing of our All-in-1 poster, the State of California released their new "2019 Minimum Wage Poster" in English and Spanish in a new format. We have included the new state poster as an enclosure in this newsletter.

The new design English and Spanish posters have both the current (2019) and future (2020) wage rates and meal and lodging credits, but the new layout has wage rates, and meal & lodging credits going back to 2017.

The new Pacific Employers "All-in-1" poster displays the minimum wage poster in the simpler style of the previous posters. You should note that the new State posters have rounded down their calculations on the meal and lodging credits. If the rate differs with the All-in-1 poster, use the new state rates.

Effective January 1, 2019, the minimum wage increased for all California industries. For businesses with over 25 employees, the law requires an increase on January 1, 2019 to \$12 per hour

Businesses with 25 or fewer employees will have an additional year to comply with the new minimum wage law. The increase for smaller companies on January 1, 2019 will be to \$11 per hour. [PE]



Seminar Series at The Depot Restaurant 207 E Oak Ave, Visalia

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.

FREE HAZ-COM TRAINING!

Over the last several years the hazardous materials communications (Haz-Com) training has changed to allow the world's industrial countries to communicate haz-com information using the same graphics (pictograms).

In a program initiated by the United Nations, national and state occupational safety and health agencies joined the Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

Now that the system has been fully implemented, all employers are now required to train employees on the new system.

Through a grant from OSHA the federal Occupational Safety and Health Administration, CSET the local Community Services Employment Training non-profit organization will train your employees at no cost to you.

Contact **Christian Lozoya** at (559) 741-4638 or osha@cset.org or **Raquel Roa** 559-741-4621 or roa@cset.org and let them know that you are interested in the **Chemical Hazard Communication**: Training that covers elements of the new Globally Harmonized System, which includes the new Safety Data Sheets, labeling and more. [PE]

AB 1066 Seventh Day Rest

One Day's Rest in 7 Rule Covers CA Ag Employees!

Many employers are aware that AB 1066 will slowly raise overtime wages for agricultural employees beginning January 1, 2019. However, a critical aspect of AB 1066 relating to the seventh (7th) day of rest rule is relatively unknown to many employers and due to poor drafting of AB 1066, it appears the one-day's-rest-in-seven for California employees in agriculture became effective January 1, 2017. [PE]

Cal/OSHA Form 300 Rules

California employers in high hazard industries with 10 or more employees are required to comply with Cal/OSHA's Form 300 recordkeeping standard.

The Form 300 is available on our website **Forms** page in the California Government section at the top of the list and includes the form, instructions and the Summary:

<http://www.pacificemployers.com/forms.htm>

High hazard employers are required to complete both OSHA Form 300 Log of Work-Related Injuries and Illnesses and OSHA Form 300A Summary of Work-Related Injuries and Illnesses, however, only the latter, the Form 300A, is required to be posted in the workplace.

The reason you post only the Summary is that it does not have the privacy related data of the Form 300. You must post the Summary only, not the Log, by February 1st of the year following the year covered by the form and keep it posted until April 30th of that year. [PE]

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

New California Minimum Wage Poster Enclosed!

President's Report ~Dave Miller~



"All-in-1" Poster for 2019!
We have mailed your 2019 "All-in-1" Poster!

Extra copies of the English as well as the new 2019 Spanish Poster are available at our office.

REMEMBER, You're not done when you get the "All-in-1" Poster up. You still need to fill out the Workers' Comp information panel and then make sure you have posted the Industrial Welfare Commission's (IWC) order for your business. Check out the **Find Your Wage Order** box on the poster for details on your firm's wage order. [PE]

ATTENDANCE RECORD & VACATION SCHEDULER

In the Fall edition of the newsletter we included the 2019 Attendance Record & Vacation Scheduler. These two forms help you keep track of employee attendance and to help with scheduling employee vacations.

If you need extra copies of either form, you may pick them up at our office or you may download a **PDF** copy from our website **Forms** page - <http://pacificemployers.com/forms.htm>

Agriculture Worker Overtime

AB 1066 becomes effective for employers of 26 or more employees January 1, 2019. For their employees a 9.5 hour day and 55 hour week will be the maximum before overtime kicks in.

Ag employers of 25 or fewer employees are spared the new phase in for 3 years with the first step to a 9.5 hour day and 55 hour week delayed until January 1, 2022.

Agricultural workers have been entitled to overtime compensation if they work more than 10 hours in a day or 60 hours in a week. However, under AB 1066, agricultural workers will eventually be paid overtime if they work more than 8 hours in a day or 40 hours in a week.

AB 1066 will slowly raise overtime wages for agricultural employees over a four-year period. For employers who employ more than 25 employees, the new pay regulations commence on January 1, 2019. For these employers, the new legislation will lower the 10-hour-day threshold for overtime by a half an hour each year until it reaches the standard eight-hour workday by 2022.

Large ag employers (over 25 employees) in the listed years, will pay overtime compensation after working the following amount of hours per day/week:

2019	2020	2021	2022
9.5 hrs/day	9 hrs/day	8.5 hrs/day	8 hrs/day
55 hrs/week	50 hrs/week	45 hrs/week	40 hrs/week

[PE]

Every man is guilty of all the good he didn't do. -Voltaire, philosopher (21 Nov 1694-1778)

Mandatory Sexual Harassment Training for All Employees!

California Governor Brown recently signed SB 1343 which requires employers with five or more employees to provide training to all employees (both supervisory and non-supervisory) by January 1, 2020.

This new law is a dramatic shift from the current requirements which have been in place for more than a decade. Current law requires employers with at least 50 employees to provide supervisors with two hours of sexual harassment prevention training within six months of hire and every two years thereafter. Now, the threshold number of employees that triggers coverage under the law has been lowered to five, and non-supervisory employees are included in the training mandate.

Key Points

- Employers with at least five employees must provide: (1) Two hours of sexual harassment prevention training to all supervisory employees; (2) One hour of sexual harassment prevention training to all non-supervisory employees.
- Part-time and temporary employees, plus independent contractors count toward the minimum employee count of five employees.
- Must be done by January 1, 2020.
- Training must occur within six months of the employee starting the position (and every two years thereafter).
- Sexual harassment prevention training may be conducted individually or as a group.
- Sexual harassment prevention training may be in conjunction with other training and may be given in shorter time segments, as long as the two-hour requirement for supervisory employees and the one-hour requirement for non-supervisory employees is met.

There is also a new requirement for temporary or seasonal employees. Beginning January 1, 2020, for seasonal and temporary employees, or any employee that is hired to work for less than six months, an employer shall provide training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. In the case of a temporary employee employed by a temporary services employer (as defined by the Labor Code), to perform services for clients, the training must be provided by the temporary services employer, not the client.

Completed This Year

This law is going to require all employers—large and small—to look at their calendars and figure out when they can train their supervisors and employees in 2019 (to meet the Jan. 1, 2020 deadline).

The myriad of new California anti-harassment laws make one thing abundantly clear—employers must take steps to prevent harassment in the workplace and failure to do so can lead to increased liability.

Employers should not simply “check the box” when it comes to training. Instead, training must meet the needs of your particular workplace, as well as the type of employee being trained.

Anyone who is trained needs to understand what sexual harassment is, what the law requires, how to report it, and your company’s policy and reporting mechanisms. But supervisors need additional information on their prevention obligations, including handling complaints, investigations, and corrective actions.

We are Here to Help

Pacific Employers offers training for supervisors, non-supervisory employees, and board members. Pacific Employers’ training meets California’s requirements in terms of the content that is covered and the need for knowledgeable trainers.

Pacific Employers’ programs can help keep you up-to-date with all the new harassment prevention requirements — so you can make sure you are in compliance! [PE]

CA - Electronic Submission of 300A Forms!

California’s Department of Industrial Relations, Division of Occupational Safety and Health (“DOSH”) issued a notice of proposed emergency regulation requiring California employers to begin submitting their 300A Form to the Federal OSHA portal, Injury Tracking Application (“ITA”).

Specifically the regulation, if approved, will require the electronic submission of the 300A Form for each establishment with 250 or more employees at any time during the previous calendar year and for establishments with 20 or more employees but fewer than 250 employees in designated industries.

On October 18, 2018, DOSH issued a notice of amended notice of proposed emergency regulatory action. This emergency regulation is based in part on Federal OSHA’s announcement in April 2018 that affected employers is State Plan states were required to submit electronically their 300A Forms even if the State Plan had not completed adoption of its own state rule.

According to DOSH

The Department of Industrial Relations, Division of Occupational Safety and Health (“the Division”) is proposing to adopt emergency amendments to Sections 14300.35 and 14300.41 of Title 8 of the California Code of Regulations. These proposed amendments would require designated employers in California to submit electronically certain occupational injury and illness information to the federal Occupational Safety and Health Administration (“OSHA”), with the first submission due by December 31, 2018.

Prior to submitting a proposed emergency regulatory action for approval by the Office of Administrative Law (“OAL”), the agency must provide notice. Interested parties are given five calendar days to submit comments on the proposed emergency regulations. Then OAL has ten calendar days to review and make a decision on the proposed emergency regulation. Once the emergency regulation is approved it will be effective for 180 days.

Based on the amended notice of proposed emergency regulatory action issued on October 18, 2018, the emergency regulation could be approved by November 3, 2018.

Employers in California should be prepared to submit their 2017 300A Forms to Federal OSHA no later than December 31, 2018 and their 2018 300A Forms no later than March 2, 2019. [PE]

Sexual Harassment Prevention Training

The Visalia Chamber of Commerce and Pacific Employers will host a state mandated Supervisors’ Sexual Harassment Prevention Training Seminar & Workshop on January 23rd, registration at 7:30am Seminar 8:00 to 10:00am, at the Lamp Liter, Visalia.

Future 2019 training dates 4-24-19, 7-24-19 and 10-23-19.

RSVP Visalia Chamber - 559-734-5876

PE & Chamber Members \$40

Non-members \$50

Certificate – Handouts – Beverages



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

What is the Minimum Exempt Salary?

Q: “With the annual change in the California minimum wage, what are the new minimum exempt salary rates?”

A: Exempt Classification Rates for all size employers change on January 1, 2019

Exempt employees in California are required to pass both a salary and a duties test. To pass the salary test, an employee must earn at least two times the state minimum wage and this rate must be multiplied by 2080 hours.

Because the state minimum wage increase on January 1, 2019, to \$12 an hour for employers with 26 or more employees and \$11 an hour for employers with 25 or fewer employees, the minimum salary for the administrative, professional and executive exemptions increases to double those rates.

Salaried employees of employers with 25 employees or less must earn \$45,760 on an annual basis or more.

Salaried employees of employers with 26 or more employees must earn at least \$49,920 on an annual basis or more in 2019.

Salary Tests for 2019

1. Small employers (25 employees or less) must pay any salaried exempt employee at least: 2 x \$11 x 2080 hours = \$45,760

2. Larger employers (26 or more employees) must pay all salaried exempt employees at least: 2 x \$12 x 2080 hours = \$49,920

Employees below the required salary can be given a raise or they can be changed to an hourly rate and paid the appropriate rate for all overtime hours worked.

Duties Tests

Generally, exempt employees are key personnel who have the discretion to make independent decisions based on their own judgment. They perform decision-making responsibilities and tasks more than half of each workday.

An employer should be able to complete an exemption worksheet that corresponds to each exempt position:

- Administrative - Executive - Professional
- Computer Professional (\$45.41/\$94,603.25)
- Physicians (\$79.39/hr)
- Outside Sales People—no salary test
- Drivers regulated by DOT

In addition, the computer software employees’ exemption and the licensed physician and surgeon exemption are tied to the California Consumer Price Index (CCPI) for Urban Wage Earners and Clerical Workers. Rate changes are announced by the California Department of Industrial Relations (DIR) each year. The 2019 rate changes reflect a 4.2% increase in the CCPI.

Please enter the new year with your exempt employees at the proper salary rates. [PE]

LABOR SEMINARS NOW AT THE DEPOT
Pacific Employers sponsors a seminar series on employee labor relations topics for all employers at The Depot Restaurant, 207 E Oak Ave, Downtown Visalia.

RSVP to Pacific Employers at 559-733-4256. *These mid-morning seminars include refreshments and handouts.*

2019 Topic Schedule

♦ **Hiring & Maintaining “At-Will”** - Planning to hire? Putting to work? We discuss maintaining “At-Will” to protect you from the “For-Cause” Trap!

Thursday, January 17th, 2019, 10am - 11:30am

♦ **Labor Law Update** - The courts and legislature are constantly “Changing the Rules.” Learn about the recent changes to both the California and U.S. laws that affect employers of all types and sizes.

Thursday, February 21st, 2019, 10am - 11:30am

♦ **Employee Policies** - Every employer needs guidelines and rules. We examine planning considerations, what rules to establish and what to omit.

Thursday, March 21st, 2019, 10am - 11:30am

♦ **Equal Employment Fundamentals** - Harassment & Discrimination in the Workplace - The seven (7) requirements that must be met by all employers. “The Protected Classes.”

Thursday, April 18th, 2019, 10 - 11:30am

♦ **Safety Programs** - Understanding Cal/OSHA’s Written Safety Program. Reviewing the IIPP or SB 198 requirements for your business.

Thursday, May 16th, 2019, 10 - 11:30am

♦ **Family Leave** - Fed & CA Family Medical Leave, California’s Pregnancy Leave, Disability Leave, Sick Leave, Workers’ Comp, etc.; Making sense of them.

Thursday, June 20th, 2019, 10am - 11:30am

♦ **Wage & Hour and Exempt Status** - Overtime, wage considerations and exemptions.

Thursday, July 18th, 2019, 10 - 11:30am

No Seminars in August or December

♦ **Forms & Posters** - and Contracts, Signs, Handouts, Fliers - Just what paperwork does an Employer need?

Thursday, September 19th, 2019, 10 - 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 17th, 2019, 10 - 11:30am

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

Thursday, November 21st, 2019, 10am - 11:30am



Dinner for 2 at the Vintage Press!
That’s right! When a business that you recommend joins Pacific Employers, we treat you to dinner for two at the *Vintage Press.*