

WHAT'S NEWS!

2013 - NEW LAWS! - 2013

California's Labor laws are highly complex, ever changing and impact California employers effective January 1, 2013. These new laws include:

WRITTEN COMMISSION AGREEMENTS

All employers who pay employees who work in California by commission must have written commission contracts. The contract must set forth the method for computing the commissions and when payment is made. The contract must be signed by the employee and the employee must be provided a copy.

SALARIES FOR NON-EXEMPT EMPLOYEES

AB 2103 amends section 515 of the Labor Code to state that payment of a fixed salary to a nonexempt employee will be deemed to be payment only for the employee's regular non-overtime hours, notwithstanding any private agreement or "explicit mutual wage agreement" to the contrary.

FACEBOOK PASSWORDS

It is unlawful for an employer to request or require a job applicant to provide his or her social media username or password or to divulge any personal social media. Likewise, an employer cannot take any adverse employment action against an employee who refuses to provide his or her social media username or password or to divulge any personal social media.

ACCESS TO EMPLOYEE RECORDS

An employee's statutory right to inspect and copy employment records has been substantially amended. The new law, which takes effect January

1, 2013, requires an employer to allow an employee an opportunity to inspect and obtain a copy of his or her employment records within 30 days of a request, unless extended by written agreement of the employee. A request may be made orally or in writing. An employer is required to maintain all personnel records for a minimum of three years after an employee is terminated.

LABOR LAW BEGINS SEMINAR SERIES

Legislative and Regulatory Changes and Important Court Decisions during this last year made significant changes for employers. Our Labor Law Seminar provides you with information you need to know to prepare for this coming year. On Thursday, January 17th, from 10 am till 11:30 am, we will be presenting the first of our 2013 monthly seminars.

NEW THIS YEAR! A LABOR LAW WEBINAR

If you cannot attend our Labor Law Seminar or just happen to miss it, take heart, we will be offering a Webinar in February titled "What's New For 2013?" Pacific Employers has partnered with California Employers Association to offer our members a Webinar to kick off the new year.

Join us to learn about the new laws, court decisions, and regulations the federal and state government expect employers to know in the new year. We will cover the important changes in the laws that will affect all California employers.

The 2013 Labor Law Update Webinar will be on Wednesday, February 13th, 12:00 pm- 1:30 pm. Webinar instructions and handouts will be emailed to registered attendees prior to the event.

Because of the hard costs involved in presenting the Webinar, there is a charge. Cost for the Webinar for our members is \$45. Non-members may attend for \$65. Sign up soon if you wish to assure a place on the Webinar. [PE]

Seminar & Webinar Flyers Enclosed!

President's Report

~Dave Miller~

"All-in-1" Poster for 2013!

We are proud to present the new 2013 California / Federal "All-in-1" Poster.

Extra copies 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 in the center of the poster for details on your firm's wage order.



Earned Income Tax Credit

The Annual Federal Earned Income Tax Credit Notification (EITC) season is upon us. Employers are required to notify their employees about the availability of the EITC.

Written notification must be provided to employees in person or by mail. Notification must be provided within one week before or after, or at the same time, that you provide an annual wage summary, including, a Form W-2 or a Form 1099. [PE]

Form 300 Rules

California employers in high hazard industries with 10 or more employees are required to comply with Cal/OSHA's enclosed 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 300-A Summary of Work-Related Injuries and Illnesses, however, only the latter, the Form 300-A, 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]

It is error only, and not truth, that shrinks from inquiry. - Thomas Paine, (1737-1809)

Recent Developments

Salaries for Non-Exempt Employees Now Banned under AB 2103

California law generally requires the payment of overtime to non-exempt employees for hours worked over 8 in one workday, over 40 in one workweek, and on the 7th day of the workweek. The calculation is straightforward for non-exempt employees paid only an hourly wage. But some employers pay hourly employees a fixed salary, such as \$1,000 per week or \$50,000 per year.

Under a new law, AB 2103, the salary paid a non-exempt employee cannot be deemed to include overtime, regardless of whether the parties have agreed to such an arrangement in an "explicit mutual wage agreement." In other words, employers are required to account for, and to pay, overtime to non-exempt employees even if those employees receive a fixed salary.

"THE NEW LAW HAS UNDONE THAT DECISION . . ."

AB 2103, effective 1/1/2013, was enacted for the express purpose of overturning the result in a recent California Court of Appeal case, *Arechiga v. Dolores Press, Inc.*, which held that a fixed salary could cover both regular time and overtime. In the *Arechiga* case, a janitor and his employer agreed that payment of a fixed salary of \$880 a week would provide compensation for 66 hours of work each week. The Court of Appeal held that this method of payment agreed with California overtime law, and that no additional overtime compensation was owed. The new law has undone that decision.

The new law clarifies that such a fixed salary can only be deemed to be compensation for the employee's regular non-overtime hours. So, even if the fixed salary clearly indicates the overtime component of the salary, AB 2103 now requires a conversion of the entire salary to a 40 hour payment, and additional overtime for all over 40 hours. Accordingly, the hourly rate for a non-exempt full-time salaried employee must be 1/40th of the employee's weekly salary. Employers may not enter into private agreements to the contrary.

The new law will only impact employers who:

- pay non-exempt employees a fixed salary instead of an hourly wage; and,
- include overtime in that fixed salary.

Employers can also get into trouble with salaried non-exempt employees if they fail to keep adequate time records. If the employee is non-exempt there is still a requirement to keep records of hours worked and meal breaks taken, even if they receive a salary.

Also, the employer still needs to convert that salary to an hourly wage for purposes of listing straight time and overtime. The advantage of a salary is always to the employee, as it is an amount that needs to be paid, whether there is any work to do or not. So why not just give the hourly rate to begin with? Simply state in the offer letter that the annual salary is a "target salary" of \$50k per year, which equates to \$24 per hour, with a caveat that the employee's actual earnings may vary based on hours worked. That is much more accurate.

Finally, the paystub needs to be accurate too. Rather than a fixed salary on the stub, it should list the hourly rate and the hours worked. For the example above it should list 40 hours at \$24 per hour.

Bottomline, paying a non-exempt employee a fixed salary is an invitation to unintended pay errors, which is never a good thing – especially in California. [PE]

Access to Employee Records

California's AB 2674, effective 1/1/2013, amends California Labor Code Section 1198.5, so that employers will need to pay close attention to the new, and in many places vague, requirements for handling such requests.

KEY ASPECTS OF AB 2674

- An employer is required to provide employees and former employees, upon request, with a form to request personnel records "relating to the employee's performance or to any grievance concerning the employee," but employees are not required to use the form.

- An employer is required to make the records available for inspection, and provide copies if the employee requests copies, within 30 days, which may be extended to 35 days by agreement of the employee and the employer.
- The request and inspection of the records may be made by a "representative" of the employee authorized in writing to inspect or receive a copy of the records. An employer need not respond to more than 50 requests for copies of records in one calendar month from employee representatives.
- An employer has to comply with only one request from each former employee to inspect or receive a copy of his or her records per year.
- An employer may redact from the records being provided the names of non-supervisory employees.
- The following records need not be provided: records related to investigation of a criminal offense; letters of reference; ratings, reports, or records obtained before the employee's employment; records prepared by identifiable examination committee members; or records obtained in connection with a promotional examination.
- For employees, the records must be provided for inspection or a copy provided at the place where the employee reports for work or at another mutually acceptable place. If the employee is forced to go to another location, the employee's compensation may not be reduced for the time of travel to or from the site where he or she normally works.
- For former employees, an employer must make the records available at the location where they are stored. An employer may mail copies of the records if the former employee pays the actual postal expenses.
- An employer must retain the records for three years after the date of an employee's termination from employment. We recommend a minimum of four years after termination.
- For former employees who were terminated for harassment or workplace violence, an employer may make the records available at a location other than the workplace, provided it is within reasonable driving distance from the former employee's residence. In the alternative, the employer may mail copies of the records to the former employee.
- If the employee files a lawsuit related to a personnel matter, the right to inspect or copy the records ceases during the pendency of the lawsuit.
- The requirements do not apply to certain public agency employees, or to employees covered by a collective bargaining agreement, provided that the agreement (a) covers wages, hours and conditions of employment; (b) provides a procedure for inspection and copying of personnel records; (c) provides for overtime compensation; and (d) provides for wages at least 30 percent higher than the state minimum wage.
- Violation of the law carries a penalty of \$750 per violation that is payable to the employee or the California Labor Commissioner, as well as the possibility of injunctive relief and attorneys' fees. [PE]

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 January 23rd, registration at 7:30am Seminar 8:00 to 10:00am, at the Lamp Liter, Visalia.

RSVP Visalia Chamber - 734-5876

PE & Chamber Members \$35 - Non-members \$50
Certificate – Forms – Guides – Full Breakfast
Future 2013 Trainings on 4-23-13, 7-24-13, 10-23-13



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

New Pregnancy Disability Leave Regulations

Q: "Will employers have to pay 4 months of health coverage to an employee on PDL?"

A: California law requires employers with five or more employees to provide Pregnancy Disability Leave ("PDL") of up to four months for employees disabled by pregnancy, childbirth or related medical conditions. Amended PDL regulations, drafted by the California Fair Employment and Housing Commission, were approved on November 30, 2012 and will go into effect on December 30, 2012. The new rules contain a number of important clarifications and requirements regarding pregnancy disability leave. These include:

- A change in how the "four months" of PDL is calculated for full-time and part-time employees;
- Details regarding the process employers must follow in accommodating leave and transfer requests;
- Specifying that the requirement to maintain health coverage during a PDL of up to four months is in addition to the requirement to maintain health coverage during a leave under the California Family Rights Act of up to 12 weeks.
- An expanded definition of "disabled by pregnancy" to include time off for: postnatal care; bed rest; gestational diabetes; pregnancy-induced hypertension; preeclampsia; post-partum depression; childbirth; loss or end of pregnancy; or recovery from childbirth, loss or end of pregnancy;
- Explaining that a "related medical condition" includes lactation-related medical conditions such as mastitis, and that a reasonable accommodation for an employee affected by pregnancy may include lactation accommodation pursuant to California Labor Code section 1030;
- Updates to the workplace posters (Notices "A" and "B") that notify employees of pregnancy disability leave rights.

The new regulations contain useful guidance regarding the pregnancy disability leave process and are recommended reading for all employers. Employers are advised to review their leave policies and practices to ensure full compliance with the new provisions. [PE]



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Call 733-4256 or 1-800-331-2592.

NO-COST EMPLOYMENT SEMINARS

The Tulare-Kings Builders Exchange and Pacific Employers host this Seminar Series at the Builders Exchange at 1223 S. Lover's Lane at Tulare Avenue, Visalia, CA. RSVP to Pacific Employers at 733-4256.

These mid-morning seminars include refreshments and handouts.

2013 Topic Schedule

♦ **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, January 17th, 2013, 10 - 11:30am

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

Thursday, February 21st, 2013, 10 - 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, March 21st, 2013, 10 - 11:30am

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

Thursday, April 18th, 2013, 10 - 11:30am

♦ **Family Leave** - Federal & California Family Medical Leave, California's Pregnancy Leave, Disability Leave, Sick Leave, Workers' Compensation, etc.; Making sense of them.

Thursday, May 16th, 2013, 10 - 11:30am

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

Thursday, June 20th, 2013, 10 - 11:30am

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

Thursday, July 18th, 2013, 10 - 11:30am

There is No Seminar in August

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

Thursday, September 19th, 2013, 10 - 11:30am

♦ **We have established a strategic partnership with California Employers Association.** Our Guest Speaker Seminar will feature **Kim Parker, Executive Vice President, Sacramento office, and Craig Strong, Regional Director of the Madera office.**

Thursday, October 17th, 2013, 10 - 11:30am

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

Thursday, November 21st, 2013, 10 - 11:30am

There is No Seminar in December

Seminar & Webinar Flyers Enclosed!

Pacific Employers

306 North Willis Street

Visalia, CA 93291

559 733-4256

(800) 331-2592

www.pacificemployers.com

email - peinfo@pacificemployers.com



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Hiring 1 Illegal Alien = \$400,000 Fine

A Wichita-based McDonald's franchisee was charged with knowingly accepting a fraudulent identification document that was offered as proof that a manager was eligible to work, according to the U.S. Attorney's Office for the District of Kansas.

McCalla Corp. has agreed to plead guilty to an immigration charge and pay a \$400,000 fine, U.S. Attorney Barry Grissom. The plea is to be entered into soon.

Grissom said the case should send a message to employers that employing undocumented workers isn't worth it.

Fines this size can put small to medium-sized businesses out of business, he said.

"Rethink what you're doing," Grissom said.

The attorneys' statement adds: "The McCalla Corporation is a Wichita company which has consistently employed procedures regarding its hiring of employees to insure that they are documented workers. The one count today which charges aiding and abetting the use of an unlawful document by a single worker signals the fact that its procedures have been almost universally successful. The fact that one worker slipped through the cracks is not an indictment of the company's efforts to comply with the law."

The worker, who was not named, worked at the McDonald's at 1630 S. Hillside, Grissom said during a news conference announcing the plea. It's one of six McDonald's that McCalla owns.

"Employment is the primary driving force behind illegal immigration," Grissom said in a news release. "I'm calling on all Kansas employers to strengthen their hiring practices to help us safeguard this nation by hiring and maintaining a lawful work force."

According to the news release, the U.S. Department of Homeland Security received information that McCalla employed undocumented workers. McCalla admitted in its plea agreement that its director of

operations learned one of its managers was using a Social Security number not assigned to her and told the manager she needed to provide new documents to confirm her eligibility to work, the release says. Two days later, she presented a resident alien identification card that the director of operations knew wasn't genuine, the release says. He updated the manager's paperwork and no further action was taken, the release continues.

The agreement, subject to court approval, provides there will be no other charges made based on the facts or circumstances of this situation, the statement says. No other past or present employees will be charged, it adds. [PE]

IRS Announces New 2013 Mileage Reimbursement Rates

The Internal Revenue Service (IRS) released the 2013 optional standard mileage rates that employees, self-employed individuals and other taxpayers use to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

2013 IRS MILEAGE RATES

Beginning on January 1, 2013, the standard mileage rates for the use of a car, van, pickup truck or panel truck will be:

- For Business Related Travel: 56.5 cents per mile driven
- For Medical or Moving Purposes: 24 cents per mile driven
- For Charitable Use: 14 cents per mile driven... unchanged from 2012

The rate for business miles driven during 2013 will increase 1 cent from the 2012 rate. The medical and moving rate is also up 1 cent per mile from the 2012 rate.

The employer reduces their liability when they pay IRS mileage rate. This assumes the employee is responsible for all maintenance on car (gas, insurance, tires, etc) and employer is not responsible for accidents, damage, etc. [PE]