



## WHAT'S NEWS! Labor Law Updates

All year the lawmakers have been making new laws and administrative agencies modify the rules on how the laws are enforced. These new rules and the changes to the old rules are matters that an employer must know, or face fines, etc. For these reasons we provide labor law updates at our January Seminar, which is the best attended of our Seminar Series. Below are examples of two law changes Effective January 1, 2016:

### KIN CARE LAW

SB 579 amends Labor Code Section 233, commonly referred to as the "Kin Care" law. The law requires that employers providing paid sick leave must permit employees to use half of their accrued and available sick leave to attend to an illness of their child, parent, spouse, or domestic partner.

SB 579 requires such leave to be used for the same reasons allowed under California's new Sick Leave Law:

- The diagnosis, care, or treatment of an existing health condition of or preventive care for an employee or the employee's family member; and
- Certain absences resulting from domestic violence, sexual assault, or stalking.

The term "family member" is defined in accordance with California's new paid sick leave law and includes not only a child, parent, spouse, or registered domestic partner but also a parent-in-law, grandparent, grandchild, or sibling.

The rights and obligations under Section 233 should no longer be referred to as "Kin Care" leave since the amended Section 233 includes not only kin care leave but also leave for an employee's own illness and leave for an employee who is a victim of domestic violence, sexual assault, or stalking. Employers must comply with Section 233 and Paid Sick Leave.

### 'SCHOOL ACTIVITIES' LEAVE

Currently, Labor Code Section 230.8 requires employers with 25 or more employees to provide unpaid leave to employees who are a parent, guardian, or grandparent with custody of one or more children who are in kindergarten or grades 1 through 12 or are attending a licensed daycare facility. Employers must provide such employees with up to 40 hours of unpaid leave each year, not to exceed eight hours in any calendar month, to participate in school or daycare activities.

SB 579 expands the reasons for which employees can take leave to include the following: (1) to find or enroll or reenroll their child in a school or with a licensed childcare provider and (2) to address a childcare provider or school emergency. "Childcare provider or school emergency" is broadly defined to mean that an employee's child can't remain in school or with a childcare provider because of one of the following:

The school or childcare provider has requested that the child be picked up or has an attendance policy, excluding planned holidays, that prohibits the child from attending or requires the child to be picked up:

- Behavioral or discipline problems;
- The closure or unexpected unavailability of the school or childcare provider, excluding planned holidays; or
- A natural disaster such as a fire, earthquake, or flood.

**Our Free Labor Law Update Seminar** is Thursday, January 21, 2016, 10am - 11:30am, at the Builders Exchange at 1223 S. Lovers Lane, Visalia. RSVP to Pacific Employers at 733-4256. [PE]

## 2016 Sexual Harassment Prevention Training Schedule Enclosed!

### President's Report ~Dave Miller~

#### "All-in-1" Poster for 2016!

You should have received your 2016 California & Federal "All-in-1" Poster by mail.

✿ *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 lower left corner of the poster for details on your firm's wage order. [PE]



### 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 1<sup>st</sup> of the year following the year covered by the form and keep it posted until April 30<sup>th</sup> of that year. [PE]

### Earned Income Tax Credit

**The Annual Federal Earned Income Tax Credit (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]

We haven't yet learned how to stay human when assembled in masses. Lewis Thomas (1913-1993)

## Recent Developments January 1st Changes

### Minimum Wage:

California's current minimum wage is \$10 per hour effective January 1, 2016.

### IRS Mileage Reimbursement Rate:

Beginning January 1, 2016, the recommended IRS reimbursement rate for business miles driven is reduced by 3.5 cents to 54 cents per mile. [PE]

## 9<sup>th</sup> Circuit Rejects Threatening Worker

**Timothy Mayo was a welder for more than 20 years.** In 1999, he was diagnosed with a major depressive disorder, but with medication and therapy, he continued to work without incident.

Things changed in 2010, when Mayo and several coworkers began to have issues with a particular supervisor, who they claimed bullied them and made their lives miserable.

Mayo began making threatening comments. He told coworkers that he felt like bringing in his shotgun to "blow off the heads" of the supervisor and another manager. He told one woman that she didn't need to worry about being present at the time he was planning to carry out the shooting because she worked a different shift.

He told yet another worker that he planned to show up with his guns at 1:30 p.m., when management had a scheduled walk-through.

He then saw a doctor, requested and was granted leave. At the end of Mayo's leave, his treating physician and a nurse practitioner both certified that he was no longer violent and was able to return to work. But his employer didn't want him back and fired him instead. He then filed a disability discrimination lawsuit

### "... WORKER ISN'T QUALIFIED FOR ANY JOB ..."

The 9th Circuit summarized the three elements an individual initially must prove to go forward with a disability discrimination claim:

- He has a disability;
- He is a qualified person with a disability; and
- He suffered an adverse employment action because of his disability.

The trial court had concluded that Mayo failed to make out the second element—that he was "qualified." It was undisputed he had made repeated and credible death threats in the workplace. According to the trial court, those threats rendered him unqualified for any job.

The 9th Circuit agreed with the trial court. To claim the protection of the disability discrimination laws, an individual must demonstrate that he can perform the essential functions of the job in question with or without an accommodation. As the court observed, an essential function of virtually every job is the ability to handle stress and interact with others. Death threats—especially when as chilling and repeated as those made by Mayo—show that a worker can't perform that essential function and thus isn't qualified. That's true even when, as claimed in this case, a mental disability is the cause of the threats. [PE]

## Federal Contractors to Pay Sick Leave

**President Barack Obama continues to use his executive authority to expand federally mandated workplace protections and benefits for employees of federal contractors.**

This past Labor Day—September 7, 2015—the president extended to approximately 300,000 employees of federal contractors, effective January 1, 2017, the right to annual paid sick leave at a rate of "not less than" one hour for every 30 hours worked. All employees, including part-time workers, are covered by the Executive Order. Workers who already enjoy paid sick leave benefits may now have access to additional sick days.

### "A PHYSICAL OR MENTAL ILLNESS, INJURY, OR MEDICAL CONDITION . . ."

Employees working for federal contractors may "earn up to seven days or more of paid sick leave annually, including paid leave allowing for family care." The Executive Order prohibits federal contractors from limiting the accrual of annual sick leave to less than 56 hours. The order applies to federal "contracts," defined as "new contracts, contract-like instruments, and solicitations." Both prime contractors and subcontractors are required to comply with the sick leave mandate as a condition of payment.

Under the Executive Order, sick leave may be used for conditions similar to those covered under the Family and Medical Leave Act (FMLA). The Executive Order requires that leave be allowed for absences resulting from:

A physical or mental illness, injury, or medical condition;

- The need to obtain diagnosis, care, or preventive care from a healthcare provider;
- The need to care for a child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association with the employee is equivalent to a family member;
- The need for counseling, relocation, legal action, or assistance from victims services organizations to deal with domestic violence, sexual assault, or stalking.

While the Executive Order mandates that accrued sick leave "shall carry over from one year to the next," it doesn't require earned but unused sick leave to be payable upon termination from employment. However, the order specifically provides that if an employee is reinstated by a contractor within 12 months after he separates from his job, his accrued unused sick leave will be reinstated, too.

Sick leave is to be provided in response to the "oral or written request of the employee," which must include "the expected duration of the leave." When the leave is foreseeable, a request for leave must be made "at least" seven calendar days in advance. In all other cases, the request for leave is to be made "as soon as is practicable." [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 with a continental breakfast on January 21<sup>st</sup>, registration at 7:30 am, Seminar 8:00-10:00 am, at the Lamp Liter Inn, Visalia.**

RSVP Visalia Chamber - 734-5876  
PE & Chamber Members \$35 - Non-members \$50  
Certificate – Forms – Guides – Full Breakfast

Future 2016 Training dates:  
April 27th, July 27th, & Oct. 26th



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

#### Makeup Time Considerations

**Q:** "I have had an employee ask if he can make up the time he will miss later in the week when he goes to the dentist. Does the law address this matter?"

**A:** With the passage of the Knox Bill in 1999, Section 513 of the Labor Code was added. Section 513 provides:

*"If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted towards computing the total number of hours worked in a day for purposes of the overtime requirements...."*

This section requires an employee to provide a signed written request for each occasion that the employee asks to make up work. For reoccurring events such as classes or regular doctor's visits, the employee may request makeup time in increments of four weeks at a time. It should be noted that an employer is prohibited from encouraging or requiring an employee to request makeup time.

If the employer approves the employee's written request the employee can work up to 11 hours in a day and 40 hours in the workweek without the payment of overtime. The time must be made up in the same workweek in which the employee takes the time off.

#### Previously Worked Overtime Warning!

However, overtime worked in advance of the employee's written request cannot be counted as makeup time even though the statute does not specifically require the request in advance, that appears to be the clear intention of the law.

A form for the employee's request for Makeup Time may be found on the Pacific Employers' "Forms" page at: <http://www.pacificemployers.com/forms.htm> [PE]

## No-Cost Employment Seminars

Pacific Employers hosts this Seminar Series at the Builders Exchange at 1223 S. Lovers Lane at Tulare Avenue, Visalia, CA. RSVP to Pacific Employers at 733-4256. *These mid-morning seminars include refreshments and handouts.*

### 2016 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 21<sup>st</sup>, 2016, 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 18<sup>th</sup>, 2016, 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 17<sup>th</sup>, 2016, 10 - 11:30am**

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

**Thursday, April 21<sup>st</sup>, 2016, 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, May 19<sup>th</sup>, 2016, 10 - 11:30am**

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

**Thursday, June 16<sup>th</sup>, 2016, 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 21<sup>st</sup>, 2016, 10 - 11:30am**

#### There is No Seminar in August or December

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

**Thursday, September 15<sup>th</sup>, 2016, 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 20<sup>th</sup>, 2016, 10 - 11:30am**

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

**Thursday, November 17<sup>th</sup>, 2016, 10 - 11:30am**



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### CONSTRUCTION FIRM FINED FOR WORKER'S TRENCH DEATH

**A** construction company has been fined more than half a million dollars in connection with the death of an employee who was allegedly "mangled" by workers trying to rescue him from a collapsed trench.

The Alaska Department of Labor and Workforce Development said 23-year-old Samuel Morgan had been laying sewer pipe with a Hartman Construction crew. Emergency responders were called to the job site after the failure of the trench -- roughly 7 feet deep and 15 feet across.

"Mr. Morgan was in the trench when an unguarded wall sloughed off and buried him to the waist," state officials wrote. "David Hartman, a partial owner of the company, and other employees tried to free Mr. Morgan from the collapsed trench using two excavators and fatally injured him in the process.

The state medical examiner determined Mr. Morgan's injuries resulted from being struck by construction equipment." [PE]

### NEARLY 5,000 U.S. WORKERS DIED ON THE JOB LAST YEAR!

**T**he number of workers who died on the job in the U.S. rose 2 percent last year, according to new data released by the Labor Department.

The Bureau of Labor Statistics reported 4,679 fatal work injuries last year, up from 4,585 the year before. The figures released were preliminary and will be finalized at a later date; the number of deaths is typically revised upward.

Despite the higher number of deaths, the rate at which workers died on the job was essentially unchanged from the previous year, at 3.3 deaths per 100,000 full-time workers. That's because U.S. workers are logging more hours in the improved economy.

The preliminary data showed a sharp uptick in deaths in the oil and gas industry. In 2014, 142 workers died in that field, compared to 112 in 2013, marking a 27 percent jump. In April, a report from the AFL-CIO labor federation found that the state with the highest workplace death rate was North Dakota, home of the Bakken oil boom. The report pegged the death rate in

North Dakota's mining and oil and gas operations at "an alarming 84.7 per 100,000," or seven times the national rate for the industry.

One group that did not fare well was older workers. The preliminary number of workers ages 55 and older who died on the job was "the highest total ever reported" by the bureau's census. The number jumped from 1,490 in 2013 to 1,621 in 2014, a 9 percent rise.

One likely reason for the rise is the fact that retirement is coming later for many Americans than it used to. [PE]

### EMBEZZLER PUNISHED & RESTITUTION ORDERED

**J**effrey Lamson, 51, of El Dorado Hills, has been sentenced to two years and six months in prison for wire fraud in connection with a scheme to embezzle money from his former employer, says U.S. Attorney Benjamin Wagner.

From at least 2009 through 2011, Mr. Lamson embezzled over \$400,000 from L&H Airco, of Rocklin, a company in Placer and Sacramento counties while he served as controller, court records showed.

He used the money to make unauthorized payments to himself and others and made payments to a fictitious vendor he controlled for services never performed.

Mr. Lamson has been ordered to pay over \$400,000 in restitution for his fraudulent conduct.

The sentence was at the low end of what the law allows. He was facing a possible maximum penalty of 20 years in prison and a \$250,000 fine or twice the gain or loss caused by the fraud. [PE]

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