Pacific Employers
MANAGEMENT ADVISOR
50 Years of Excellence!
July 2014

WHAT'S NEWS!

California Teacher Job Protections Struck Down in Students' Suit!

In a closely watched court case that challenged California's strong teacher employment protections, a group of nine students have prevailed against the state and its two largest teachers' unions.

A California Superior Court recently found that all the state laws challenged in the case were unconstitutional. The verdict could fuel similar lawsuits in other states where legislative efforts have failed to ease rules for the dismissal of teachers considered ineffective.

The student plaintiffs in *Vergara v. California* argued that the statutes protecting teachers' jobs serve more often to keep poor instructors in the schools—hurting students' chances to succeed. The teachers' unions said state laws didn't preclude school districts from making their own hiring and firing decisions.

"JUDGE FINDS STATE LAWS ON TEACHER DISMISSAL 'UNCONSTITUTIONAL'..."

Among the laws challenged in the case was California's "Last-In, First-Out" layoff statute, which requires layoffs based on seniority rather than classroom performance. Also challenged were complex dismissal statutes for ineffective teachers that plaintiffs described as costly, burdensome and involving "a borderline infinite number of steps."

"This is going to shake things up and change things in a big way," Ted Boutrous, a lawyer representing the student plaintiffs, said Tuesday. "It will usher in a new day in terms of educational equality and protecting the rights of students and teachers."

The California Teachers Association and the American Federation of Teachers didn't immediately comment on the verdict.

Research has pointed to teacher quality as the biggest in-school determinant for student performance. In recent years, many states have moved to simplify dismissal procedures for ineffective teachers and to encourage districts to consider teacher performance in layoff decisions rather than relying solely on seniority.

Efforts in California failed in the legislature, so students and their advocates took the case to court—a novel way to test the long-standing state policies. The trial, which ran for more than 30 days, concluded in late March.

California school districts employ roughly 280,000 full-time equivalent teachers, and the average annual teacher's salary is just under $70,000. [PE]

Minimum Wage Poster Enclosed!

President's Report
~Dave Miller~

CAL/OSHA CONSTRUCTION CRACKDOWN

Construction industry employers should be aware that Cal/OSHA is deploying teams of investigators to construction sites throughout the state "to determine whether adequate measures have been taken to identify safety hazards and prevent injury," it says. There will be focus on specific issues and all employers should expect aggressive enforcement.

Cal/OSHA is reacting to a series of recent fatal falls at construction sites around California. Cal/OSHA is fanning out to inspect worksites and puts employers on notice to pay attention to fall protection.

Investigators will be specifically checking safety railings, personal fall protection devices and equipment, and tie-offs. Cal/OSHA also will be looking for trench hazards, equipment safety and proximity to power lines. Cal/OSHA reminds employers that if it finds a lack of fall protection or other serious hazards, it can issue a stop-work order at the site, which will be in force until the hazard is abated. Employers deemed to be in violation of safety standards also will be cited and ordered to correct the violations.

Three workers have died last month and another survived with injuries. They include a fatality in Riverside when a worker tied off to a train bridge being dismantled rode down when the section toppled; an incident in San Mateo where a worker fell nine feet from a wall; and a death in San Jose where a worker unloading sheetrock from the third story of a building under construction fell over a railing from a sheetrock stack. [PE]

"Politicians never accuse you of 'greed' for wanting other people's money -- only for wanting to keep our own money."
-- Joseph Sobran
(1946-2010) Columnist

Recent Developments

I.R.S. Bars Employers From Dumping Workers Into Health Exchanges

Many employers had thought they could shift health costs to the government by sending their employees to a health insurance exchange with a tax-free contribution of cash to help pay premiums, but the Obama administration has squelched the idea in a new ruling. Such arrangements do not satisfy the health care law, the administration said, and employers may be subject to ***a tax penalty of $100 a day — or $36,500 a year — for each employee who goes into the individual marketplace***.

The ruling this month, by the **Internal Revenue Service,** blocks any wholesale move by employers to dump employees into the exchanges.

Under a central provision of the health care law, larger employers are required to offer health coverage to full-time workers, or else the employers may be subject to penalties.

Many employers — some that now offer coverage and some that do not — had concluded that it would be cheaper to provide each employee with a lump sum of money to buy insurance on an exchange, instead of providing coverage directly.

But the Obama administration raised objections, contained in an authoritative question-and-answer document released by the Internal Revenue Service, in consultation with other agencies.

The health law, known as the **Affordable Care Act (ACA),** builds on the current system of employer-based health insurance. The administration, like many in Congress, wants employers to continue to provide coverage to workers and their families.

"I don't think that an employer-based system is going to be, or should be, replaced anytime soon," **President Obama** said recently, when asked if the law might speed the erosion of employer-sponsored insurance.

When employers provide coverage, their contributions, averaging more than $5,000 a year per employee, are not counted as taxable income to workers. But the Internal Revenue Service said employers could not meet their obligations under the health care law by simply reimbursing employees for some or all of their premium costs.

Christopher E. Condeluci, a former tax and benefits counsel to the Senate Finance Committee, said the ruling was significant because it made clear that "an employee cannot use tax-free contributions from an employer to purchase an insurance policy sold in the individual health insurance market, inside or outside an exchange."

If an employer wants to help employees buy insurance on their own, Mr. Condeluci said, it can give them higher pay, in the form of taxable wages. But in such cases, he said, the employer and the employee would owe payroll taxes on those wages, and the change could be viewed by workers as reducing a valuable benefit.

Andrew R. Biebl, a tax partner at CliftonLarsonAllen, a large accounting firm based in Minneapolis, said the ruling could disrupt arrangements used in many industries.

"For decades," Mr. Biebl said, "employers have been assisting employees by reimbursing them for health insurance premiums and out-of-pocket costs. The new federal ruling eliminates many of those arrangements by imposing an unusually punitive penalty."

When an employer reimburses employees for premiums, the arrangement is known as an employer payment plan. "These employer payment plans are considered to be group health plans," the I.R.S. said, but they do not satisfy requirements of the Affordable Care Act.

Under the law, insurers may not impose annual limits on the dollar amount of benefits for any individual, and they must provide certain preventive services, like mammograms and colon cancer screenings, without co-payments or other charges.

But the administration said employer payment plans do not meet those requirements.

Richard K. Lindquist, the president of Zane Benefits in Park City, Utah, a software company that helps employers reimburse workers for health insurance costs, said, "The I.R.S. is going out of its way to keep employers in the group insurance market and to reduce the incentives for them to drop coverage."

The ruling came as the Obama administration rushed to provide guidance to employers and insurers deciding what types of coverage to offer in 2015.

In a new regulation, the **Department of Health and Human Services** said it would provide financial assistance to certain insurers that experience unexpected financial losses this year. Administration officials hope the payments will stabilize premiums and prevent rate increases that could embarrass Democrats in this year's midterm elections.

Republicans want to block the payments, which they see as a bailout for insurance companies that supported the president's health care law.

In a separate rule, the administration prohibits states from imposing onerous restrictions on insurance counselors, who educate consumers and help them enroll in health plans. Under the rule, states cannot establish standards that impair the counselors' ability to help consumers or to perform other tasks required by federal law.

In January, a federal district judge in Missouri found that the state was illegally obstructing the activities of insurance counselors, including those **known as navigators**. The state has appealed the decision. [PE]

OSHA Bypasses Statute of Limitations

The Occupational Safety and Health Administration (OSHA) and the National Labor Relations Board (NLRB) entered into a Memorandum of Understanding (MOU) whereby employees who file untimely complaints against their employers alleging violations of the Occupational Safety and Health Act will be told to contact the NLRB.

The statute of limitations to file a complaint with OSHA is just 30 days from the date of occurrence, but employees have 6 months from the date of occurrence to file unfair labor practice charges against their employers with the Board.

"OSHA COMPLAINERS WILL ALSO RECEIVE A FOLLOW UP LETTER FROM OSHA . . ."

OSHA personnel are even supplied with the following talking points to advertise the NLRB to untimely OSHA complainants:

- OSHA recommends that you contact the NLRB as soon as possible to inquire about filing a charge alleging unfair labor practices.
- The time limit to file a charge with the NLRB is 6 months from the unfair labor practice.
- The NLRB is responsible for enforcing employee rights under the National Labor Relations Act (NLRA). The NLRA protects employee rights to act together to try to improve working conditions, including safety and health conditions, even if the employees aren't in a union.
- You may also locate your nearest NLRB Field Office at www.nlrb.gov/who-we-are/regional-offices (OSHA may want to look up the nearest office and provide the number and address).

Untimely OSHA complainers will also receive a follow up letter from OSHA reminding them to reach out to the NLRB for support. [PE]

Human Resources Question with Candice Weaver

The Month's Best Question

Salaries for Exempt Employees

Q: ***"We have always maintained an annual salary for our exempt employees. The new minimum wage increase is going to create a situation where we will be increasing salary mid-year. How do I handle that mid-year increase for annually paid exempt employees?"***

A: The CA minimum wage increase July 1st may result in a 12.9% salary increase for many exempt employees. Employees who are paid less than the new salary minimum for exempt employees will have to see a pro-rated increase to their annual salary beginning on July 1st of this year. Any increase needs to be retroactive to the first of July but not to the first of the year.

As you are aware, effective July 1, 2014, the California minimum wage will increase from $8 to $9 per hour pursuant to AB 10. It will increase again to $10 per hour effective January 1, 2016.

The salary of your lower level exempt employees may be inadequate to preserve exempt status in the Golden State.

In, California, exempt employees generally must earn a minimum monthly salary of no less than two times the state minimum wage. In recent years, and through June 30, 2014, $2,773.333 per month which annualizes to $33,280 was the minimum exempt employee salary.

On July 1, 2014, the minimum monthly salary to preserve exempt status under Labor Code 515 rose to $3,120 per month, annualized at $37,440.

Many businesses perform annual salary adjustments driven by either an evaluation year or an employee anniversary date year.

Increasing the monthly salary to at least $3,120 on July 1, 2014 is now required.

Increasing the annual salary to at least $37,440 for calendar year 2015 meets the new requirements.

The next increase, on January 1, 2016 is not so much of a mid-year problem, but another substantial increase of salary exempt employees to $41,600 on an annual basis or $3,466.67 per month. [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 July 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 2014 Training date: 10-22-14

No-Cost Employment Seminars

Pacific Employers hosts 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.

- Our Next 2014 Seminar -

♦ **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 17th, 2014, 10 - 11:30am

These mid-morning seminars include refreshments and handouts.

♦ **Reminder -- There is No August Seminar!**

Seminar Topic Talk with Dawn

Hiring & Maintaining "At-Will" Seminar

If you are an employer contemplating hiring or have already hired, you should be aware of your "At-Will" status and how to ensure you maintain your "At-Will" relationship. Come hear from our experts at Pacific Employers' free Hiring & Maintaining "At-Will" Seminar on Thursday July 17th from 10-11:30am at the Tulare-Kings Builders Exchange, 1223 S. Lover's Lane in Visalia.

David E. Miller, President of Pacific Employers, will be the primary presenter of the seminar. Candice Weaver, Human Resources Executive will also contribute. To attend the free seminar please call Pacific Employers at 733-4256. [PE]

Prevailing Wage Seminar

Pacific Employers in conjunction with the SLO County Builders Exchange will be having a comprehensive review of the California Prevailing Wage statues and regulations on July 16, 2014 from 10am to noon in San Luis Obispo.

Our very own Candice Weaver will be training and giving the following highlights:

- What the apprentice requirements are on public works projects;
- How the California prevailing wage statutes differ from the Federal Davis Bacon Act;
- How to determine if a "private" project requires the payment of prevailing wages;
- How to ensure that your subcontractors comply with the prevailing wage statutes and how to avoid penalties if they don't; and
- What to do if the Ca DLSE or DOL conducts an investigation or issues a wage assessment.

Cost $30/person, lunch will be included (this seminar is open to members and non-members of SLO Builder's Exchange or Pacific Employers). RSVP by July 14, 2014 to (805) 543-7330 or info@slocbe.com [PE]

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Auto Shop In TV Show Violating Wage Law

West Coast Customs of Corona, a well-known auto restyling center, and its owner must pay $157,592 in back wages and liquidated damages to 45 employees after an investigation by the U.S. Department of Labors (DOL) Wage and Hour Division (WHD).

According to a statement from the DOL, a WHD investigation found that the company willfully violated the Fair Labor Standards Acts (FLSA) overtime, minimum wage, and record-keeping provisions. In addition to back wages and damages, the settlement agreement requires the employer to pay $16,830 in civil money penalties. [PE]

Grower Owes $2 Million In Back Wages

The U.S. Department of Labor (DOL) announced that it is seeking to obtain a judgment against strawberry grower Fernandez Farms Inc., based in Watsonville, and its president, Gonzalo Fernandez, requiring payment of nearly $1 million in back wages to approximately 400 farmworkers for minimum wage and overtime violations.

Additionally, the DOL is seeking more than $1 million in penalties for the wage violations and for egregious violations of the H-2A temporary nonimmigrant worker program, which includes a failure to hire qualified U.S. workers and allegedly requiring workers to pay a substantial sum of their earnings to cover the costs of the program. [PE]

Nursing Center Pays $1 Million In Back Pay

The owners of the Yuba Skilled Nursing Center in Yuba City have paid $1 million to compensate current and former employees for the loss of pay and benefits that occurred when longtime employees weren't hired after the facility was sold to a successor employer, according to a statement from the San Francisco Regional Office of the National Labor Relations Board (NLRB).

The Service Employees International Union, United Healthcare Workers West, represented employees at the nursing center before it was purchased by Nasaky, Inc., in 2011.

Under the National Labor Relations Act (NLRA), new owners that hire a majority of employees previously employed by the former owner are obligated to recognize and bargain with the existing union as a successor employer. [PE]

OSHA Orders Fine In Whistleblower Case

OSHA orders $257,000 fine in whistleblower case. OSHA has ordered DISH Network to pay a former employee $157,024 in back wages and $100,000 in compensatory damages after an investigation found that the Colorado-based company violated the antiretaliation provisions of the Sarbanes-Oxley Act by blacklisting the former employee after he reported a vendor for submitting fraudulent invoices and testifying at a deposition. The former employee complained to OSHA in 2011 that he had been blacklisted three times after leaving DISH. [PE]

State's Union Membership Rate Slips

The U.S. Bureau of Labor Statistics (BLS) released union membership statistics on January 24 showing the percentage of California workers in unions slipped a bit during 2013. The state's union membership rate *(the percent of wage and salary workers who are members of unions)* decreased in 2013 to 16.4% of public and private workers, down from 17.2% in 2012.

The BLS figures show the largest numbers of union members lived in California (2.4 million) and New York (two million). More than half of the 14.5 million union members in the United States lived in just seven states; California, Illinois, Michigan, New Jersey, New York, Ohio, and Pennsylvania. [PE]