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# Pacific Employers

Spring 2022

Over 50 Years of Excellence!



## MANAGEMENT ADVISOR

### SAFETY REPORT! The Temps Are Rising...

The weather is getting warm. It's sunny, and bright. Many love the sunshine on their skin, but that sunshine should be a reminder to employers that they must do a heat illness prevention training for their employees. Employees must be informed about the amount of water they need to consume in warmer temps, the frequency of rest periods in shaded areas, and the appropriate steps to take if you notice an employee is showing signs of heat illness among other elements.

Train your employees, and train your supervisors. Who do they call, and what do they do in a heat related emergency. More than 11,000 Americans have died from heat-related causes since 1979. This does not include those who have experienced heat related illness and survived. With the central valley high temps rapidly approaching, it is imperative that employees be properly trained. [PE]

### Weeding Things Out, One By One...

We live in California. many perks come with living in this state. Being close to the coast, and the mountains, accessibility to fresh produce, and mild climate (depending on where in California you are located.) For employers though, the beauty of the state draws more and more dim, as the regulations on operating a business grow more and more stringent.

A new California Bill AB 2188, proposes to prohibit discriminating against employees who use cannabis outside of work. In addition, an applicant could not be discriminated against, if they failed a pre-employment drug test on the basis of marijuana.

The employer is still entitled to a drug free workplace, and doing marijuana on the job, or being impaired while at work would NOT be permitted. This makes it difficult though, because if an employee seems impaired and is sent for a reasonable suspicion drug test, how would the test be able to differentiate whether the employee was positive for marijuana and was impaired at that time, or whether they simply did it recreationally at home prior to work?

There have been many concerns raised about this bill, as it would essentially eliminate pre-employment drug testing for marijuana. It would also make reasonable suspicion very difficult to prove. We shall see what comes of this bill if passed. [PE]



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.

### STAYING REMOTE PERMANENTLY? STAY COMPLIANT.

Many have returned to their workplace across the state, getting away from remote work, however many organizations have chosen to remain remote despite the lifting of statewide COVID-19 restrictions.

Employers with remote employees in California need to ensure they are complying with the state's employment laws when it comes to those working from home. California Labor Code Section 2802 requires employers to reimburse employees for "all necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." For remote employees, what an employer may need to reimburse could include internet and cell phone services. Prior California court decisions have concluded employers must reimburse for reasonable portions of an employee's cell phone use when the employee uses their cell phone for work.

Tracking time for employees who are not exempt from overtime becomes even more important for remote employees. California's wage orders define hours worked as "the time during which the employee is subject to control of the employer" regardless of whether work is being performed. Moreover, the Wage Orders require employers to track all time worked, specifically when the employee "begins and ends each work period" and all meal periods. [PE]

### CALSAVERS... A REMINDER

It's nice to receive friendly reminders. Getting friendly reminders regarding a bill helps keep us from late fees. A reminder about an appointment helps keep us from having to reschedule and missing an important appointment. A reminder about CalSavers can help save you from penalties in the future. While there is still about a month and a half to get compliant, all organizations with 5 or more employees will need to either opt in to CalSavers, or exempt yourself from CalSavers by enrolling in a private qualified retirement plan for your organization. The penalties come on pretty quickly, so acting soon is IMPERATIVE. If you are looking for a reference to help you get information regarding a private retirement program for your organization, contact our office and we can get you with a trusted point of contact. [PE]

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

### Heat Illness Prevention Flyer Enclosed!

### What's News!!!

#### Employee is Granted \$450k From Panic Attack!



In 2019, an employee in Kentucky knew it was common for the company to throw birthday celebrations for employees. Knowing this, he went to his manager to ask people not do any type of celebration for him as he struggled with anxiety and panic attacks.

The manager the employee explained this to was away from the office, and his co-workers threw him a surprise celebration for his birthday, which did in fact trigger a panic attack. The man was approached the next day regarding his "somber behavior" and the employee responded in an angry manner which led to the employee being terminated for his intimidation of his co-workers. The man later sued the company on the basis of discrimination against his disability. The verdict is in on that case, and the employee was granted a sum of \$450,000 dollars. \$150,000 for lost wages and benefits, and \$300,000 more for suffering, embarrassment, and loss of self-esteem. [PE]

### Proposed 4-Day Workweek!

A proposed bill in California AB 2932 that would require overtime thresholds to be paid after 32 hours in a workweek instead of 40 hours has to take a back seat for another year at least.

If you haven't heard about this bill, it drew a lot of attention and stressed employers in California out because it would require overtime to be paid after only a threshold of 32 hours per week, which significantly reduces the workweek, and the amount of money that would need to be paid to employees who are accustomed to working more than that.

This bill failed to meet committee deadlines so we won't see anymore of it in 2022, but there is a possibility we could be seeing it in the future. There is trouble for many, if this comes to fruition on many fronts. Employees that are full-time expect to have a 40-hour workweek. If their employer is forced to pay overtime after 32 hours, they may reduce the number of hours a full-time employee gets and that employee may need those hours to survive. I guess we won't be worrying about it much for now though. [PE]

"Live in the sunshine, swim in the sea,  
drink the wild air." – Ralph Waldo Emerson



## HR Report ~Tiffany Harris~ The COVID Corner (Since It Doesn't End)

Re-adopting the COVID-19 Emergency Temporary Standard...AGAIN

That's right my friends...For the third time.. Yes the THIRD TIME, the standards board has voted and readopted the Cal/OSHA Emergency Temporary Standard (ETS). Cal/OSHA's standards have altered once again the way of doing business for California employers. The April 21 vote means the new ETS will be in effect until December 31st, 2022.

### Some Specifics You Should Know

- Terminology, from "high risk exposure period" to "infectious period"
- Changes to the definition of what constitutes a face covering to exclude whether light can pass through the fabric as a factor in whether the covering is acceptable
- Elimination of the term "fully vaccinated."
- Introduction of the new term "returned case" to refer to workers who have had COVID-19 and have subsequently returned to work and for whom testing is not required
- Elimination of cleaning and disinfecting procedures;
- A requirement that symptomatic employees be tested regardless of their vaccination status
- An explanation that close contact exclusions are governed by California Department of Public Health (CDPH) guidelines;
- COVID-19 positive cases with no symptoms or resolving symptoms can return to work after testing negative on the fifth day;
- a new requirement that workers who have tested positive and have symptoms that are "not resolving" (which is not defined in the regulation) may return only after ten days or after their symptoms resolve;
- a continued requirement of testing for outbreaks, but partition requirements have been replaced with a requirement that employees maintain a physical distance of six feet or as much distance between persons as feasible; and
- a change to the requirement that testing be "required"—rather than simply "made available"—for major COVID-19 outbreaks (defined as twenty positive tests in thirty days).

As things evolve, we will make sure to keep you in the loop! [PE]

## Guidelines On How To Adopt An Alternative Workweek

Adopting an alternative workweek schedule can help you avoid daily overtime. An eight-step procedure follows to help you comply with the rules in adopting alternative workweeks. Pacific Employers has also included several sample forms to simplify the process.

### Alternative Workweek Schedule

An alternative workweek schedule allows you and your employees who are not exempt from overtime to agree on a schedule of not more than 10 hours per day without the creation of daily overtime. Twelve (12) hour work days are permitted under wage order 5. In the most common alternative arrangement, employees work four 10-hour days. The "9/80" schedule is a plan which allows employees to work 80 hours over nine days. Other types of scheduling being utilized include a combination schedule. This schedule allows an employee to work a combination of hours not to exceed 10 hours per day. Twelve (12) hour work days are permitted under wage order 5.

### 8 Step Method to Establishing an Alternative Workweek

Follow the following steps to adopt an Alternative Workweek that is compliant with the Industrial Welfare rules:

1. Identify work units to be covered. An alternative workweek must apply to a specified work unit. Existing rules define a work unit as a division, department, job classification, shift or separate location. In some situations, even a single employee may qualify as a work unit.
2. Prepare a written proposal. Describe the new schedule and its impact, including working over 8 hours in a day without overtime, on pay and benefits. You can propose a single schedule for all workers in the work unit or a menu of schedule options for employees to choose from. A schedule can fluctuate if the differences are specified in the proposal. Two consecutive days off are required under wage orders 1,2, 3, 6, 7, 8, 11, 12, and 13. Wage orders 4, 5, 9, 10, 16 and 17 do not require two consecutive days off.
3. Communicate with workers. Employers must meet with employees to discuss the impact of the alternative workweek scheduling proposal.
4. Hold a secret ballot election. Employees must ratify the agreement by a two-thirds majority in a secret ballot election.
5. Have employees select schedules if you propose a menu. Each employee should select, in writing, a fixed schedule from the menu. To simplify matters, have employees initial their schedule on the written agreement.
6. Election results must be reported. The employer must report election results within 30 days to the California Department of Industrial Relations, Division of Labor Standards Enforcement, Attn: Alternative Workweek Election Results, P.O. Box 420603, San Francisco, CA 94142. It is best to do so before instituting the new schedule.
7. Get the schedule agreement signed. Many of the existing and reinstated wage orders require that at least two-thirds of your employees voluntarily sign a schedule agreement.
8. Accommodation of employees where necessary. Each employee in the work unit is subject to the new workweek arrangement, even if they voted against it. However, the employer must try to arrange a schedule that does not exceed eight hours in a day for employees who were eligible to vote, but cannot work the new schedule. And you must explore accommodations for workers whose religious beliefs or observances conflict with the schedule. If, after the election, an employee is hired who is unable to work the alternative schedule, you are permitted, but not required, to make an accommodation for the person.

Pacific Employers' clients who need further information or assistance on adopting an Alternative Workweek Schedule are welcome to contact the office. [PE]



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

#### Employing Minors

**Q:** "I want to hire some teenagers for the summer, what do I need to know?"

**A:** It is that time of year again. School is out and kids will be looking for summer jobs. Below is guidance from the California State Labor Commissioner's Office.

#### Information on Minors and Employment

Almost all minors under the age of 18 are subject to California's child labor protections. Under the California Labor Code, "minor" is defined as any person under the age of 18 years required to attend school under the provisions of the Education Code, and any person under age six. "Dropouts" are subject to California's compulsory education laws, and thus are subject to all state child labor law requirements. Emancipated minors, while subject to all California's child labor laws, may apply for a work permit without their parents' permission.

#### Work Permits

Except in limited circumstances defined in law and summarized above, all minors under 18 years of age employed in the state of California must have a permit to work, even during the summer.

Prior to permitting a minor to work, employers must possess a valid Permit to Employ and Work. The Permit to Employ and Work are issued on the same form. A Permit to Employ and Work in industries other than entertainment is usually issued by an authorized person at the minor's school. During summer months or when school is not in session the work permit is obtained from the superintendent of the school district in which the minor resides.

Typically, after an employer agrees to hire a minor, the minor obtains from his or her school a Department of Education form entitled "Statement of Intent to Employ Minor and Request for Work Permit". The form must be completed by the minor and the employer and signed by the minor's parent or guardian and the employer. After returning the completed and signed form to the school, school officials may issue the permit to employ and work.

Permits issued during the school year expire five days after the opening of the next succeeding school year and must be renewed.

#### Entertainment Work Permits

Minors aged 15 days to 18 years employed in the entertainment industry must have a permit to work, and employers must have a permit to employ, both permits being issued by the Labor Commissioner's Office. These permits are also required for minors making phonographic recordings or who are employed as advertising or photographic models. Permits are required even when the entertainment is noncommercial in nature.

If your company or organization intends to hire minors and you need further information please call the office for further guidance. [PE]

## LABOR SEMINAR SERIES!

Pacific Employers sponsors a seminar series on employee labor relations topics for all employers.

### 2022 Topic Schedule

♦ **Safety In The Workplace** - As much as labor laws change in the workplace, we must not forget about safety regulations in business.

Thursday, May 19th, 2022, 10am - 11:30am

♦ **Leave of Absences** - The interaction of leave law is among the most convoluted and confusing to understand in labor law.

Thursday, June 16th, 2022, 10 - 11:30am

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

Thursday, July 21st, 2022, 10 - 11:30am

#### No Seminars in August or December

♦ **Forms, Posters, Handouts, and More** - What do you need to have posted? What handouts are our favorite? Join us to find out.

Thursday, September 15th, 2022, 10 - 11:30am

♦ **Labor Law Update** - What bills were passed? What new laws will impact your organization?

Thursday, October 20th, 2022, 10 - 11:30am

♦ **Discipline and Terminations** - The steps to take prior to termination. Managing a progressive approach.

Thursday, November 17th, 2022, 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*.

### SEXUAL HARASSMENT PREVENTION TRAINING WEBINAR

Pacific Employers will be hosting sexual harassment prevention training webinars for employees who need 1 hour of training and supervisors who need 2 hours of training. Call to Reserve a spot and get additional information. Scheduled dates/times are listed below:

Where: Webinar  
When: June 8th From 3:00PM-5:00PM