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Pacific Employers

Winter 2021

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MANAGEMENT ADVISOR SAFETY REPORT!

Monitor Remote Workers, A Valid Topic

We are at the end of 2021, and it was very common in 2020 to have remote workers. While employees have since been able to return to work in an in-person capacity, it has become so acceptable for employees to continue working remotely where possible. For many organizations, it became almost more efficient and cost effective to have employees work from home.

The reason it is so important to monitor remote workers now is because some are finding the "efficient work" is really a lot of dropped balls. It takes time to recognize there is an issue. Many times it comes in the form of an angry client or customer who says they never received an item and upon further investigation, you realize this customer is not the only one who has not received a completed project. Some things you can do to monitor include:

- Tracking time spent on company computer using a program that monitors time clocked on devices.
- Touching bases on items of note. Are they completed? Are they in progress?
- Requiring certain days in office. This helps keep employees accountable and allows for the employer to do a face to face check in.

If you do keep remote workers, just ensure tasks are being completed. There's a fine line between monitoring and micromanaging. Finding the line is important. In addition, there are costs associated with employees working from home, such as covering the costs to operate in that capacity. Things like equipment, electricity costs, wifi, and others should be included. [PE]

CAL/OSHA Voted On ETS Again

Cal/OSHA's COVID-19 Emergency Temporary Standards (ETS), was set to expire on January 14th, 2022, so of course there was a readoption meeting, and an extension has been put in place.

Some items that were reviewed in the readoption meeting included:

- More detailed definition of face coverings and which coverings are acceptable.
- Provisions for self-administered COVID-19 testing and requirements for tests done in that scope.

These changes have been approved and are officially in effect on January 14th, 2022. They are set to be in place until April 14th, 2022. This of course leaves time for further adoptions to be proposed after that. Check the interior part of this newsletter as we provide a more detailed look at the readopted provisions. [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.

BURNOUT. WHAT DOES IT LOOK LIKE?

Don't many employers feel burned out? Doing business in the state of California is exhausting, and then trying to make sure customers are happy, employees are content, there's enough in the bank to make ends meet, and business is continuing to grow, all while trying to follow COVID-19 guidelines, mandates, and requirements. That sounds like the definition of exhaustion, and it's only 8:02am, but what does burnout look like for employees and why does it happen?

According to a senior advisor at the Limeade Institute (an organization that conducts research on employee well-being) says, "Burnout is when people have been highly engaged for a long time, without the personal skills and organizational support to maintain their well-being." As you can imagine 2020 was especially tough for many employees, and 2021 was not much better.

In order to reduce the potential for burnout, you should check-in with your employees. See how they are doing. If they are okay, they can put their best foot forward giving their best effort for you, which in turn helps the company's success. Encourage employees to recognize when they have reached their limit, and encourage them to find ways to de-stress. While you may be burnt out as an owner, if your employees are doing okay, they can help you get to where you're going. [PE]

AG OVERTIME... A REMINDER

It isn't anything new, but rather a reminder for Ag employers. Since 2019, Agriculture employers have been in the phase out for overtime thresholds. In 2019, employers with 26 or more employees had to pay overtime for any hours worked in excess of 9.5 in a day, or 55 in a workweek. Each year since, the overtime threshold has been reduced. In 2022, employers with 26 or more employees will be required to pay overtime for any time worked in excess of 8 hours in a workday, and 40 hours in a workweek.

In addition, those smaller ag employers will start their threshold reduction for overtime. Employers with 25 or fewer will need to pay overtime for time worked in excess of 9.5 in a workday and 55 in a work week, and it will trend down each year until smaller ag employers reach the 8/40 threshold in 2025. [PE]

Want Breaking News by E-Mail?
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Tell us you want the News by E-Mail!

2022 Vacation Scheduler Enclosed!

What's News!!!

Minimum Wage, It's Going Up Again!



It isn't really news, is it? The minimum wage in the State of California has been scheduled to increase each year for years and 2022 is no exception. In fact, if you looked at the annual labor law poster we distribute each year, the rates for 2022 are already on there.

Effective January 1st, 2022 the minimum wage will increase for employers with 26 or more employees from \$14.00/hour to \$15.00/hour. Employers with 25 employees or fewer will have a set increase from \$13.00/hour to \$14.00/hour.

This also changes the minimum salary for exempt employees. Employers with 26 or more employees will be required to pay their salaried exempt employees a minimum of \$62,400 per year. Employers with 25 or fewer employees will be required to pay a minimum annual salary of \$58,240. Make sure you make the changes in payroll where applicable for all work on January 1st, 2022 and thereafter. [PE]

The Mask Mandate is Back!

That's Right!!! Our Governor has brought back the masking in indoor settings protocol. Vaccinated for COVID-19? That does not matter, according to Governor Newsom. There is a new variant (Omicron). It is also the peak of holiday shopping, so the state has decided to try getting ahead of Omicron by requiring individuals to mask up when inside. This mandate is in effect December 15th, 2021 through January 15th, 2022.

There are a few groups of individuals who are exempt from mask-wearing while indoors, and those groups are:

- Persons younger than two years old. Very young children must not wear a mask because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a mask. This includes persons with a medical condition for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a mask would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines. [PE]

"My goal is to build a life I don't need a vacation from!" – Rob Hill Sr.



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 second time, the standards board has voted and readopted the Cal/OSHA Emergency Temporary Standard (ETS). Cal/OSHA's standards has altered once again the way of doing business for California employers, including a return of COVID-19 testing, social distancing rules, and face covering requirements for fully vaccinated employees in certain circumstances. The December 16 vote means the new ETS will be in effect from January 14, 2022 through the middle of April.

Some Specifics You Should Know

- **Screening Employees:** In employer screenings for COVID-19, both the screener and employees must wear face coverings regardless of vaccination status. This is a change from the previous ETS.
- **Notification Post Exposure:** While post exposure notification requirements exist, the ETS clarifies that all employees who were on the premises at the same worksite as the COVID-19 case during the high-risk exposure period must be provided notification.
- **Testing, Post Exposure:** Previously, employees who were exposed in the workplace but were fully vaccinated would not need to be provided testing unless they were symptomatic. Now, even those fully vaccinated must be provided testing post exposure.
- **Definitions Revised:** Many definitions have been revised in Cal/Osha's Emergency Temporary Standard (ETS) and you should be aware of what those definitions are. The terms defined include: COVID-19 Test, Face Coverings, Fully Vaccinated, and Worksite.
- **Employer Provided Transportation and Housing:** Filtration requirements have been added for employer provided housing; you will want to ensure, if you provide housing, you are maintaining compliance on that. In addition, if you provide company provided vehicles, you will be required to provide face coverings to all who will be traveling in those vehicles, to include those who are fully vaccinated.
- **Period of Time:** While it starts on January 14th, 2022 and is set to be in place for 90 days, bringing it to the middle of April, Governor Newsom signed an executive order which allows the Board the ability to extend the standards through the end of 2022. It is advisable that you be prepared for this to be in place for awhile.

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

CAL SAVERS: A Requirement To Come For Many Employers

We are surprised to hear how many employers have still not heard about CalSavers, as we have put it in previous newsletters and done seminars on it. Still clients have no idea it will be required for them to enroll in, if not exempted through a private plan.

For those who need a refresher, California has put in place a mandate for all employers who don't offer a retirement plan privately, to enroll in the "CalSavers" plan with the state, which allows employees to have a retirement plan. The state's plan, while may seem very simplistic, will likely require a bit of work on the employers end, as employees who do choose to enroll will have to have their paycheck properly deducted, and will need to monitor employees for changes as requested. By June 30, 2022 employers with five or more employees are required to have a retirement plan in place for workers — either through a private-market option, like a 401(k), or through the state-run CalSavers program.

Who needs to take action, and when do they need to do it by?

Employers, including non-profits, with five or more employees that don't sponsor a retirement plan must either start a new 401(k) plan or register with CalSavers by June 30, 2022; however, companies of any size can register now.

What do employers need to do?

Employers can register through the CalSavers website or, if they are offering a qualified private-market alternative like a 401(k), file an exemption on the same site. After registering, the employer is required to add employees within 30 days of completing the registration. After registration, maintenance of the plan for each employee will be required.

What if an employer already offers a retirement plan?

Make sure to file an exemption on the CalSavers site. Many exempt employers have been pre-cleared; however, if you receive a notification from CalSavers and believe you are exempt, report your exemption on the site.

Some of the qualified private-market alternatives include 401(k) plans; 408(k) SEP plans; 408(p) SIMPLE IRA Plan; 401(a) Qualified Plan (including profit-sharing plans and defined benefit plans); and 403(a) or 403(b) Annuity Plan. (See complete list in the CalSavers FAQ.)

What happens if an employer misses the registration deadline?

Employers who miss the deadline will pay a fine of \$250 per eligible employee if noncompliance extends 90 days or more after the notice; that increases to an additional \$500 per eligible employee if noncompliance extends 180 days or more after the notice. [PE]



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

Exempt Vs. Non-Exempt

Q: "Can I still use my arbitration agreement when I hire new employees?"

A: There are so many things left unsaid undone about Arbitration Agreements and their use.

On September 15, 2021, in a 2-1 decision, the Ninth Circuit upheld most of California's law banning mandatory arbitration agreements and prohibiting employers from retaliating against applicants who refuse to sign an arbitration agreement. Chamber of Commerce of the United States of America, et al. v. Bonta, et al., No. 20-15291, --- F.4th --- (Sept. 15, 2021) ("Bonta"). This ruling will be challenged, there's no doubt about that, but in the meantime, employers are faced with uncertainty regarding the continued use of mandatory arbitration agreements.

Understanding AB 51 and its Impact

If you recall, AB 51 was signed in 2019 and was set to be effective January 1st, 2020. This law would prohibit the use of arbitration agreements as a mandatory item of employment. Before the law went into effect, Chief U.S. District Judge Kimberly Mueller of the Eastern District of California issued an injunction preventing the State of California from enforcing the law. The reason was because she believed it contradicted the Federal Arbitration Act (FAA), which favors arbitration agreements and prevents states from enacting laws that obstruct the purposes and objectives of the FAA. For the last year and half, this allowed employers to continue using arbitration agreements as they were before.

- Continue using arbitration agreements
- Utilize arbitration agreements as valid until ruled otherwise.

Since September 15th Ruling:

As noted above, the Ninth Circuit ruled in favor of the elements in AB 51, clarifying some things about arbitration agreements and their use in the workplace. Now, employers cannot use arbitration agreements:

- As a condition of employment, meaning it has to be an optional item for an employee to choose whether they want to sign or not.
- As a means to retaliate against those who opt out of signing any optional arbitration agreement.

What Employers should do in the meantime?

As we wait, employers use of arbitration agreements should be cautioned. They can be used, but in more limited capacity at this point. Since you cannot make it a condition of employment, it is advisable that you take the arbitration agreement out of your hiring packet, unless you specifically state signing the arbitration agreement is optional.

If an arbitration agreement were in a new hire packet, a new employee would likely feel the item was a requirement to sign, and if needed to be utilized down the line, it would likely be thrown out in court. The waiting game is never easy, especially when you're talking about business operations, but the best method for now is simply that.

We will be taking arbitration agreements out of our handbooks going forward as well. [PE]

LABOR SEMINAR SERIES!

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

2022 Topic Schedule

♦ **Cal Savers** - You may have heard about the required retirement program for employers to set up. Find out what you need to do for it.

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

♦ **Review Labor Laws for 2022** - The Courts and legislature continue to adapt current law and create new standards for employers to abide by. Come review your standards for 2022 with us.

Thursday, February 17th, 2022, 10 - 11:30am

♦ **Hot Topics, What's New?** - There's always something new and in this webinar, we will be discussing some current hot topics.

Thursday, March 17th, 2022, 10 - 11:30am

♦ **Equal Employment Fundamentals** - Harassment and Discrimination in the workplace. Let's discuss the protected classes.

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

♦ **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, 2021, 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: January 10th From 8:00 AM-10:00 AM

February 10th From 3:00PM-5:00PM

March 18th From 8:00AM-10:00AM