



Over 50 Years of Excellence!

March 2016

WHAT'S NEWS!

FEHA Amended

The California's Fair Employment and Housing Act (FEHA) prohibits harassment and discrimination based on protected classes. It also contains provisions relating to pregnancy disability leave.

Amendments to FEHA regulations have been approved and will take effect on April 1, 2016.

The amendments to the FEHA cover a wide range of topics, including:

- Who a covered "employer" is under FEHA.
- An employer's duty to create a workplace free of harassment and discrimination, including further explanations of an employer's affirmative duty to prevent and correct discriminatory and harassing conduct.
- A rule that would allow the Department of Fair Employment and Housing to obtain "non-monetary preventative remedies" against an employer, even if there is no evidence of underlying discrimination or harassment.
- Required content, dissemination and translation of harassment and discrimination prevention policies.

- Rules relating to mandatory supervisor sexual harassment prevention training, including course content and recordkeeping requirements.
- Sex discrimination and harassment regulations to address gender identity, gender expression and transgender protections.
- National origin discrimination regulations to reflect recent legislation prohibiting discrimination against persons who hold the special driver's license that can be issued to undocumented persons who are unable to submit satisfactory proof their presence in the United States is authorized under federal law.
- Clarifications regarding pregnancy disability leave.

The Fair Employment and Housing Act (FEHA) prohibits harassment and discrimination in employment because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (Government Code sections 12940, 12945, 12945.2) and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

You may visit the Fair Employment and Housing Council's website for the text of the amendments that the Council sent to the Office of Administrative Law, along with the Council's statement of reasons for proposing the amendments.

The website is: <http://www.dfeh.ca.gov/fehcouncil.htm> [PE]

New Pregnancy Disability Leave Poster Enclosed!

President's Report ~Dave Miller~

SF Retail Workers Bill of Rights

The San Francisco "Retail Workers Bill of Rights," addresses scheduling, hours and retention at retail establishments. These rules are now in effect.

In general, the ordinances apply to "Formula Retail Establishments" (or chain stores) with at least 40 formula retail establishments worldwide and 20 or more employees in San Francisco, as well as their janitorial and security contractors.

Among other mandates, the ordinances require covered employers to:

- Provide new employees with a written "good faith estimate" of their expected schedule.
- Provide at least two weeks' notice of employee shift schedules or pay a penalty.
- Offer any extra work hours to current qualified part-time employees in writing before hiring new employees or using contractors or staffing agencies to perform additional work.
- Post a notice on size 8.5"x14" paper.

Find information about the Retail Worker Bill of Rights here:

<http://sfgov.org/olse/formula-retail-employee-rights-ordinances>

[PE]



Workplace Discrimination & Harassment Seminar

Equal Employment Fundamentals - Harassment & Discrimination in the Workplace - The seven (7) requirements that must be met by all employers regarding waivers for certain "Protected Classes."

Learn complainant's burden to prove age discrimination. Be informed with a review of the requirements and standards at Pacific Employers' free **Equal Employment Fundamentals** Seminar on Thursday, March 17th from 10-11:30am at the Tulare-Kings Builders Exchange (1223 S. Lover's Lane in Visalia).

Candice Weaver will be our presenter. Please call Pacific Employers at (559) 733-4256 to reserve your spot today! [PE]

What can be asserted without proof can be dismissed without proof. - Christopher Hitchens, author and journalist (1949-2011)

Recent Developments

U.S. Unions Added to Ranks in 2015 But Failed to Gain Market Share

The rate of union membership in the U.S. held steady last year, with slight overall gains in union membership rosters outweighed by the rising ranks of nonunion workers.

The share of U.S. workers in unions last year was unchanged at 11.1%, according to Labor Department figures, a reflection of the labor movement's struggle to reverse years of stagnation that followed decades of declines.

"... LABOR MOVEMENT THAT'S NOT MOVING,..."

Unions collectively added new members in the private and public sectors, including in industries such as leisure, hospitality, retail, education, and health services, while they saw declines in manufacturing, construction and transportation. Their gains weren't enough to increase the overall rate of membership.

Membership in the private sector rose slightly to 6.7% from 6.6% in 2014 as unions added 195,000 more members there. The public sector had 23,000 more unionized workers in 2015 than it did the year before, but the membership rate fell to 35.2% from 35.7% over that period due to a larger increase in nonunion government workers. The overall number of government workers rose by 388,000.

"You've got a labor movement that's not moving," said Gary Chaison, a professor of industrial relations at Clark University in Worcester, Mass. "It's a failure to be revitalized." [PE]

SLO Meat Processor Fined

Vitco Meats and temporary employment agency Volt Workforce Solutions have been fined a combined \$74,500 following a nearly fatal accident at a San Luis Obispo meat processing plant that left a worker with a crushed right hand, a broken arm, and nerve damage.

"THE ACCIDENT COULD HAVE BEEN FATAL, THE STATE SAYS . . ."

"When companies hire temporary employees they do not sign away their responsibilities to protect workers from industrial accidents." Neither company had trained the employee to safely operate or clean the industrial meat grinder he was operating, says Cal/OSHA. "Both temporary employment agencies and host employers are required to ensure workers are trained and understand safety procedures."

The worker was attempting to remove ground beef stuck inside the hopper of a meat mixer, which moves beef into the grinder. When he reached into the hopper, the power was still live. Paddles that move the beef rotated twice, causing severe injuries to the employee. Had the paddles rotated a third time, the accident could have been fatal, the state says.

Cal/OSHA's investigation found that Vitco Meats did not require employees to disengage the power on industrial equipment prior to cleaning. Additionally, the company lacked specific procedures for powering down the meat grinder, which also lacked a required cover with interlock. Cal/OSHA issued a total of nine citations to Vitco Meats with proposed penalties of \$63,900.

Cal/OSHA also issued a serious citation to Volt Workforce Solutions for failing to ensure that Vitco Meats had an injury and illness prevention program or safety training for meat grinders.

A serious violation is cited when there is a realistic possibility

that death or serious harm could result from the actual hazardous condition. The company was also issued one regulatory and two general citations for proposed penalties of \$10,600.

Workers can be electrocuted or suffer permanent disfigurement due to inadvertent activation of a machine while it is being maintained, repaired or adjusted. Failure to develop and follow lockout / tagout procedures before working on machinery is one of the major causes of serious injury and death in California.

Lockout / tagout procedures refer to the use of devices to ensure equipment cannot be operated until the devices are removed. Use of these devices, and developing procedures to ensure their use, are required by the California Code of Regulations. [PE]

Employer Recoups Training Costs

Employers invest in employees in different ways. For example, sometimes employers pay for employees to undergo significant training. And they hope the employee will not promptly leave and use that training while working for another employer. So, they may ask the employee to repay the cost of the training if they leave employment within a period of time after receiving the training.

At the same time, California law favors employee mobility, and disfavors employers' passing along the costs of doing business to employees.

However, some employees try to escape from their promises to repay training costs by attempting to claim that these arrangements violate the law. Under most circumstances, though, these are legal agreements, and employers are entitled to the benefit of their bargain.

A recent case gives good news for employers. First, in this case there was a written agreement. Second, this was not an employer-mandated training program. Third, participation was voluntary, in that the employee could have taken the test for the position he sought without going through the training. Fourth, he did not have to lay out any money of his own, rendering most of his Labor Code claims inapposite. Fifth, the training was transferable to other employers and other work.

The trial court granted summary judgment for the employer requiring payment and the court of appeal affirmed. *USS-POSCO Industries, Inc. v. Case* [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 April 27th, 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:
July 27th, & Oct. 26th*



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

Notice To Employees

Q: "We increased some of our employees' pay because of the higher minimum wage that went into effect on January 1st. Do we need to re-issue the "Notice To Employee" for all of our employees who were given a higher wage?"

A: No. Employers are not required to re-issue the Notice to Employee to existing employees with updated wage information as long as new increased rate is shown on the employee's pay stub with the next payment of wages.

California employers are required to provide non-exempt employees with certain information upon hire as required by the Wage Theft Protection Act. The law became effective in 2012 and is codified at Labor Code section 2810.5. So don't forget to update wage information on notices required for new hires.

Most employers use the Labor Commissioner's template to meet their legal requirement, and will pre-populate the items in the form that do not change from employee to employee, lessening the information required to be completed on the form for each employee.

Many employers that have employees working at the minimum wage will pre-populate the wage information section of the form with the minimum wage rate and the applicable overtime rates based on that minimum wage rate.

However, with the increase in California's minimum wage in 2016 state wide and also in many local areas (such as San Francisco, San Jose, Los Angeles and Santa Monica), employers should review and update the wage information section on the Notice to Employee.

The DIR has a great FAQ on the Wage Theft Protection Act on their website that employers should review.

The link to the FAQ is:

<http://www.dir.ca.gov/dlse/FAQs-NoticeToEmployee.html>

The DIR's information form is available on our website at:

<http://www.pacificemployers.com/forms.htm> [PE]

New PDL Poster!

The Fair Employment & Housing Council has done away with the previous "Notice A" and "Notice B" posters and has issued new Pregnancy Disability Leave poster.

We have included it as an insert in this issue of the month's **Management Advisor**. It will also be included in any future update of Pacific Employers' the All-In-One poster. [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 Seminars

♦ Equal Employment Fundamentals -

Harassment & Discrimination in the Workplace - The seven (7) requirements that must be met by all employers. "The Protected Classes."

Thursday, March 17th, 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 21st, 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 19th, 2016, 10 - 11:30am

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

Thursday, June 16th, 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 21st, 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 15th, 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 20th, 2016, 10 - 11:30am

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

Thursday, November 17th, 2016, 10 - 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*.

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

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AGE DISCRIMINATION

Stack Bros. Mechanical Contractors is a heating and plumbing contractor. Randy Virta, a service manager, and Karen Kolodzeske, a bookkeeper, worked for the company for 16 and 25 years, respectively.

Virta's employment was terminated on February 14, 2014, allegedly because he turned 62. In May 2014, Kolodzeske objected to the company's plan to fire her at 62, saying it was illegal to terminate her employment because of her age.

Stack Bros. retaliated against her by docking her pay and informing her that her position would be changed to part-time and that she would have to reinterview to keep her position. When Kolodzeske turned 62 her employment was terminated.

The EEOC filed a lawsuit against Stack Bros. claiming the company discriminated against Virta and Kolodzeske by firing them simply because they turned 62. The consent decree settling the lawsuit prohibits Stack Bros. from engaging in discrimination in the future and requires it to pay \$95,000 to Virta and \$35,000 to Kolodzeske.

In addition, the company must pay \$10,000 of the employees' attorneys' fees and train its managers and employees on its obligations and employees' rights under the Age Discrimination in Employment Act (ADEA). [PE]

COSTUMED WORKERS SUFFER HEAT ILLNESS!

Multiple employees of a theme park suffered from heat-related illnesses last year because of excessive heat they endured while performing shows in costumes. According to OSHA, employees worked outdoors dressed as costume characters and performed routines in the sun.

Incidents of heat-related illnesses occurred but the OSHA spokeswoman would not disclose how many employees were affected, other than to say more than one employee experienced symptoms.

OSHA cited one serious violation of the agency's general duty clause for the park's alleged failure to furnish a place of employment free from recognized hazards that were causing or likely to cause serious physical harm.

The park also faces a proposed penalty of \$7,000, the maximum penalty permitted for each serious violation. A serious violation occurs when a workplace hazard, that the employer knew or should have known about, could cause an accident or illness that would most likely result in death or serious physical harm. [PE]

FATHER AND SON CONVICTED OF EMBEZZLEMENT

A father and son were convicted of embezzling over \$300,000 from employee wages on public works jobs. Daniel Jacob Siapin, 60, and his son Gabriel Daniel Siapin, 37, both of La Habra Heights, pleaded guilty to a court offer of 28 felony counts of taking and receiving a portion of worker's wage on public works, and 32 felony counts of recording a false and forged instrument with a sentencing enhancement for property loss over \$200,000.

Daniel Siapin's California state contractor's license was revoked by the court. Daniel Siapin and Gabriel Siapin are each expected to be sentenced to 90 days in jail, three years formal probation, ordered to pay over \$227,000 in restitution, and are prohibited from working on any other public works contracts at their sentencing.

At the time of the crime, Daniel Siapin owned Siapin Horticulture, a landscaping, irrigation, and maintenance company, which he ran with his son Gabriel Siapin. The defendants violated the law on a public works job, which requires a minimum "prevailing wage" be paid to workers.

Prevailing wage consists of a base salary and "fringe benefits," or benefits in addition to base pay such as vacation pay and pension money. Fringe benefits must be paid directly to the worker. [PE]

Want Breaking News by E-Mail?

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peinfo@pacificemployers.com

Tell us you want the News by E-Mail!

