

## WHAT'S NEWS!

### SHPT Now To Include Abusive Conduct!

**Since 2005, California has required employers with 50 or more employees to conduct Sexual Harassment Prevention Training (SHPT) of supervisors within 6 months of assuming a supervisory position and biennially thereafter.** Governor Brown recently signed **Assembly Bill 2053** into law, expanding the mandated content of this training to include training on prevention of “abusive conduct.”

The statute defines “abusive conduct” as conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests. The statute further provides that abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance. However, “a single act shall not constitute abusive conduct, unless especially severe and egregious.”

The new law does not further specify the content of the training on prevention of abusive conduct, nor does it mandate that any

specific amount of time be allotted to this topic within the 2-hour sexual harassment training. The new law takes effect January 1, 2015. Employers covered by California’s training requirement should review and revise their training materials to ensure that prevention of abusive conduct is covered.

The new law’s training requirement does not create a private right of action by an employee against the employer to seek damages for workplace bullying. It is a training requirement only. However, if an employee is “bullied” because of a characteristic protected under California’s Fair Employment and Housing Act (e.g. race, gender, religion, disability, age), the employee could bring a claim for harassment or discrimination under that law.

Even if bullying is not directed at an employee because of a protected characteristic, it is still possible for a bullied employee to pursue a claim for “intentional infliction of emotional distress.”

For these reasons, employers (regardless of whether they are covered by the new training requirement) may wish to include language in their employee handbooks making it a violation of company policy for employees to engage in workplace bullying/abusive conduct toward other employees. Employers should also take workplace complaints of abusive conduct/ bullying seriously by conducting prompt investigations and taking appropriate remedial action. [PE]

## Employee Attendance Form Enclosed!

### President's Report ~Dave Miller~

#### Attendance Record - 2015 Poster

**Attendance Record** -- This month Pacific Employers supplies you with the new “2015 Attendance Record.” Its purpose is to provide a way to keep track of an employee’s annual attendance on a single sheet. A shorthand guide for keeping track of absences, injuries, leaves of absence, sick days, vacations, etc., will be included on the form. If you need additional copies, please contact our office or visit the forms page of our website to download as a PDF.



**December 2014** - Instead of our monthly “*Management Advisor*” you will receive the updated, 2015 version of the Pacific Employers’ “All-in-1” Poster which includes the required federal and state postings for most businesses.

**January 2015** - Our Labor Law Update Seminar will be held on Thursday, January 15th, 2015, 10 - 11:30am. Learn about the recent changes to both the California and U.S. laws that affect your business and employees. [PE]

### Employee Time Off To Vote

**A**s Election Day approaches, remember that California has a requirement that employees be given time off to vote, often with pay, subject to the individual’s hours of work and the times when the polls are open. Employers are required to post notices in advance of an election, advising employees of their rights. Violation of this statute is a misdemeanor punishable by fine. If you have posted the Pacific Employers “All-in-1” Poster, you are in compliance.

If an employee does not have sufficient time outside of working hours to vote, the employer must provide enough time off that when added to time available outside of working hours, the employee will be able to vote.

Unless otherwise agreed, the time off must be at the beginning or end of a shift, whichever allows the most free time to vote and the least time off from work. Employees who three working days before the election have reason to believe that time off will be necessary, must give the employer notice two business days before the election. Up to two hours off must be paid. Employers must post, in a conspicuous place, a notice setting forth these provisions no less than ten days before the election. *Cal. Elec. Code §§ 14000-14001.* [PE]

“Opposition, n. - In politics, the party that prevents the government from running amuck by hamstringing it.”  
-- Ambrose Bierce (1842-1914) Humorist

## Recent Developments

### CalOSHA Gets Hands Tied

**California Governor Jerry Brown has signed A.B. 1634 into law. This new law significantly changes an employer's obligations** to abate alleged workplace safety and health hazards in California and reduces the ability of the California Division of Occupational Safety and Health (DOSH) to make modifications to civil penalties.

**"DOSH WILL BE PROHIBITED . . . FROM GRANTING PROPOSED MODIFICATIONS."**

As of January 1, 2015, DOSH will be prohibited, in the case of serious violations, from granting proposed modifications to civil penalties for abatement or credit for abatement unless the employer has done one of the following three things: (1) abated the violation at the time of the initial inspection; (2) abated the violation at the time of re-inspection (prior to a citation being issued); or (3) has submitted a signed statement under penalty of perjury with supporting evidence to show the violation has been abated (this must be received by DOSH within 10 working days of the date fixed for abatement). While the new bill provides that "[t]he submission of a signed abatement statement shall not be considered as evidence of a violation during an appeal," it seems difficult to comprehend how the ability to abate and the method of abatement will not be considered as evidence that the employer violated the Act, especially in General Duty Clause cases.

A.B. 1634 notes that if DOSH fails to receive evidence of abatement or the signed statement within 10 working days after the end of the abatement period, it will notify the employer that additional civil money penalty for failure to abate will be assessed retroactive to the end of the abatement period unless the employer can provide sufficient evidence that the violation was abated prior to that date. DOSH will also conduct a re-inspection of serious violations within 45 days following the end of the abatement period whenever it does not have evidence of abatement.

In addition, in the case of serious, repeat serious, or willful violations, an appeal to the Occupational Safety and Health Appeals Board (OSHAB) by the employer will no longer stay or suspend the requirement to abate the hazards unless the employer can demonstrate by a preponderance of the evidence that a stay or suspension of the abatement will not adversely affect the health and safety of employees. The employer must request a stay or suspension of abatement by filing a written, verified petition with supporting declarations with the OSHAB within 10 days after the issuance of the order or decision. [PE]

### Client Jointly Liable With Labor Contractor!

**Governor Brown signed AB 1897 into law, notwithstanding tremendous opposition from business and trade groups.** Under AB 1897, which takes effect January 1, 2015, a client employer will share civil legal responsibility and civil liability for all workers supplied by a labor contractor for the payment of wages and the failure to obtain valid workers' compensation coverage.

A "client employer" means a business entity that obtains or is provided workers to perform labor within its usual course of business from a labor contractor. However, it does not include business entities with a workforce of less than 25 workers (including those hired directly by the client employer and those provided by a labor contractor) or businesses with five or fewer workers supplied by a labor contractor at any given time.

The new law makes the client employer jointly liable with the labor contractor for civil liability relating to the payment of wages and/or failure to provide workers' compensation coverage. However, the statute expressly permits client employers to include indemnification provisions in their service contracts and to enforce those provisions as a remedy against the labor contractor for liability created by acts of the labor contractor. Labor contractors may also contractually

agree to indemnity provisions in their favor for acts on the part of the client employer that lead to liability. The statute sets forth one exception to the ability of the parties to shift liabilities by contract – a client employer may not shift to the labor contractor any legal duties or liabilities under Cal-OSHA.

Under the new law, a worker or his representative must notify the client employer of violations at least 30 days prior to filing a civil action against the client employer. Of course, the new law also prohibits client employers or labor contractors from taking adverse action against a worker for providing notifications of violations or filing a claim or civil action. [PE]

### CA's PW Laws Do Not Apply To Off-Site Fabrication

**On August 27, 2014, the California Court of Appeal issued its decision in the long-anticipated *Russ-Will* case, *Sheet Metal Workers' International Association, Local 104 v. Duncan; Russ Will Mechanical, Inc.*** The court held that the California prevailing wage law does not apply to employees who fabricate materials for a public works project at a permanent, offsite manufacturing facility that is not exclusively dedicated to the project. It is a published decision, which means it is binding upon the California trial courts, the California Department of Industrial Relations (DIR), and the Division of Labor Standards Enforcement.

In *Russ-Will*, the court conducted an exhaustive analysis of whether off-site fabrication was considered covered work and concluded that neither the statute nor the DIR's treatment of the topic supported a finding that it was covered work. As the court stated:

*"Offsite fabrication is not covered by the prevailing wage law if it takes place at a permanent, offsite manufacturing facility and the location and existence of that facility is determined wholly without regard to the particular public works project."*

The *Russ-Will* decision is an extraordinarily important decision for any project owner, contractor, or supplier involved with public works construction in California. The decision brings to rest significant confusion and debate over whether the off-site fabrication of items to be used on a public works construction site is subject to California's prevailing wage and apprenticeship requirements. It is anticipated that the debate will now turn to the California legislature, where we expect the Building Trades unions and other worker advocates will introduce new legislation to expand the scope of the prevailing wage laws to off-site fabrication. [PE]

### Sexual Harassment & Abusive Conduct Training

**Visalia Chamber of Commerce and Pacific Employers, will jointly host a state mandated Supervisors' Sexual Harassment & Abusive Conduct Prevention Training Seminar & Workshop with a continental breakfast on January 21<sup>st</sup>, 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 2015 Training dates: 4-22-15, 7-22-15, 10-21-15



**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.



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

#### Sick Leave Accrual

**Q:** “Now that every California worker must be covered by sick leave pay, how does the new sick leave accrue?”

**A:** Beginning on July 1, 2015, employees who work in California thirty or more days within a year from commencement of employment are entitled to paid sick days, to be accrued at a rate of no less than one hour for every 30 hours worked (inclusive of overtime). Exempt employees are deemed to work the lesser of 40 hours per workweek or the hours that reflect their normal workweek.

Similar to California’s requirements for vacation accrual, employers must allow employees to carry over all accrued, unused sick days to the following year of employment. However, employers may limit the use of paid sick leave to 24 hours, or three days, in each year of employment.

Employers may cap the accrual rate to a maximum bank of 48 hours, or six days, of paid sick time. This six-day accrual limit appears intended to ensure the employee has full sick leave rights for both the instant year and the beginning of the next year. Finally, employers have the option of avoiding calculating accrual and carry over by frontloading the amount of sick leave that can be used at the beginning of each year to 24 hours or three days.

#### WHEN does this law really go into effect?

All California employers should carefully review the Act’s requirements and start taking steps to ensure compliance now, to prepare for January 1, 2015. A first reading of the Act might leave the impression that the overall effective date is July 1, 2015. This is because the Act expressly delays employees’ entitlement to paid sick leave until on or after July 1, 2015 – provided they have worked in California for 30 or more days within a year from the commencement of their employment. However, since the July 1, 2015 effective date applies only to the benefit entitlement provision (Lab. C. 246(a)), the rest of the statutory additions and amendment in AB 1522 – including those imposing posting, notice, recordkeeping, and arguably accrual requirements – will become effective on January 1, 2015, under normal operation of California law, because AB 1522 specifies no other alternate effective dates. [PE]

## SEMINAR TOPIC TALK WITH DAWN

### Discipline & Termination Seminar

**N**othing can get you in trouble faster than a bad discipline or termination. Do the words discipline and termination intimidate you? Are you unsure of how to proceed when problems with employees arise?

Learn progressive discipline techniques and the steps to take before termination at Pacific Employers’ free Discipline & Termination Seminar on Thursday, November 20th from 10-11:30am at the Tulare-Kings Builders Exchange, 1223 S. Lover’s Lane in Visalia. [PE]



## 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.

*These mid-morning seminars include refreshments and handouts.*

### 2015 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 15<sup>th</sup>, 2015, 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 19<sup>th</sup>, 2015, 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 19<sup>th</sup>, 2015, 10 - 11:30am**

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

**Thursday, April 16<sup>th</sup>, 2015, 10 - 11:30am**

♦ **Family Leave** - Federal & California Family Medical Leave, California’s Pregnancy Leave, Disability Leave, Sick Leave, Workers’ Compensation, etc.; Making sense of them.

**Thursday, May 21<sup>st</sup>, 2015, 10 - 11:30am**

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

**Thursday, June 18<sup>th</sup>, 2015, 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 16<sup>th</sup>, 2015, 10 - 11:30am**

#### There is No Seminar in August

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

**Thursday, September 17<sup>th</sup>, 2015, 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 15<sup>th</sup>, 2015, 10 - 11:30am**

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

**Thursday, November 19<sup>th</sup>, 2015, 10 - 11:30am**

#### There is No Seminar in December

Employee Attendance Form Enclosed!

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### REPEAL OF 60-DAY WAITING PERIOD REQUIREMENT

**C**alifornia's Waiting Period Laws -- A waiting period is defined as the period of time that must pass before coverage becomes effective for an employee or dependent who is otherwise eligible to enroll in the plan.

In September 2013, California enacted a law that imposed California-specific waiting period requirements for group health plans. Under this law, insured group health plans were prohibited from imposing waiting periods that exceeded 60 days. This 60-day limit applied to both large group and small group policies, effective for plan years beginning on or after Jan. 1, 2014.

This distinction between state and federal waiting period requirements created a great deal of uncertainty for California insurers and employers that sponsored insured health plans, and was immediately met with resistance from those in the insurance industry.

#### Repeal of 60-day Waiting Period Requirement

On Aug. 15, 2014, California Governor Jerry Brown signed SB 1034 into law, which repeals California's 60-day waiting period rule. This new law is intended to prohibit California insurance carriers from imposing state-specific waiting periods. Instead, the law allows employers to establish their own waiting periods of up to 90 days to conform to the ACA's rules. In doing so, SB 1034 removes many of the complexities that California-based employers and insurers faced in administering group health plans.

#### Effective Date

There has been some confusion over the date that SB 1034 takes effect. In general, laws take effect immediately upon enactment, unless a provision in the law states otherwise. Because SB 1034 does not contain any provisions that specify an effective date, many in the insurance industry believe that this requirement took effect on Aug. 15, 2014, when the law was enacted.

However, there has been some speculation that the law actually takes effect on Jan. 1, 2015. State agencies may provide guidance in the future that clarifies this issue.

Notwithstanding this confusion, in many cases, issuers and employers have already established waiting periods under their plans for the 2014 plan year. It will likely take some time to amend their plans to allow for waiting periods in excess of 60 days, and some may not be able to amend their plans until the 2015 plan year. [PE]

### \$2.4M SETTLEMENT WITH HAWAII FARMS

**U**.S. District Judge Leslie E. Kobayashi in Hawaii has approved settlements between the U.S. Equal Employment Opportunity Commission (EEOC) and four Hawaii farms totaling \$2.4 million for about 500 Thai farmworker (EEOC v. Global Horizons).

The EEOC charged that the workers had been subjected to national origin discrimination and retaliation. The settlement includes monetary relief, options for jobs and benefits, housing, other reimbursements of expenses, and sweeping injunctive relief remedies.

The EEOC filed suit against the four farms and farm labor contractor Global Horizons. In March 2014, the court ruled that Beverly Hills, Calif.-based Global Horizons was liable for the pattern or practice of harassing, discriminating against and retaliating against the Thai farmworkers based on their national origin and race. [PE]

### Labor Law Seminar

**S**ick Leave - courtesy of "Big Brother" ♦ 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 15th, 2015, 10am - 11:30am

New laws that affect employers are on their way!

- Paid sick leave ordinances — CA & SF, who's obligated in the state to offer this now?
- The top wage and hour threats here in California, and tips for ensuring compliance

Join us to review and discuss changes in the Labor Law landscape. RSVP to 559-733-4256