

THE CALIFORNIA EMPLOYMENT LAW CORNER

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SEX, LIES & 2011 EMPLOYMENT LAWS Let the Employer Beware

With limited time and resources, employers and business owners struggle to keep current and in compliance with all of the required California & Federal Employment laws. Lawsuits continue to rise, thus all employers and business owners must beware. Prevention is key now more than ever before. However, many employers continue to "do what ever one else is doing" which means more myths and wrong data continue to circulate. Information from the internet is usually not current or accurate. Thus, don't fall prey to errors. Below are a few rules and best practices every employer should know and follow:

Document Meals & Breaks for Hourly Workers still required:

Until there is a definite ruling from the CA Supreme Court, the burden remains on the employer to "document" that hourly employees did take their required 10 minute breaks every 4 hours of work and their required 30 minute meal period every 5 hours of work. Daily logs are still the best practice in this area.

Employers continue to make errors in this area of documentation giving rise to claims before the California Labor Commissioner. And now, with the new bond posting rules, employers who want to challenge a California Labor Commissioner ruling must first post a bond for the amount awarded (see below).

New Organ & Bone Marrow Donation Leave now required:

The employer with **15 or more** employees must offer paid leave to employees (who have already exhausted all of their sick leave) who elect to donate their organs or bone marrow. For the organ donor the employer must grant up to 30 work days of paid leave a year and for the bone marrow donor the employer must grant up to 5 workdays of paid leave a year. (See SB 1304 for more information).

New Standard for Employers under Cal/OSHA now required:

Cal/OSHA can now establish a rebuttable presumption against the employer if the employer commits a serious violation of workplace safety. Cal/Osha's new standard is proving there is a "realistic possibility" of serious physical harm or death. This means the agency has an easier burden of proof against the employer as the prior standard was "substantial probability." The new standard is "realistic possibility" which means the employer must beware of all realistic situations where there is a possibility an employee can suffer serious physical harm or death.

New CA Unemployment Insurance Eligibility for Domestic Violence Victims:

Victims of domestic violence have been a protected class category in California for a while. Now, under AB 2364, employees can voluntarily leave their employer for good cause to protect the employee's **family** from domestic violence abuse and it will be considered "good cause" to resign under the unemployment eligibility rules/regulations. Prior to this law, only children were included, now that has been expanded to include family. (See AB 2364 for more information)

New CA Labor Commissioner Bond Requirement when Employers Appeal:

Now if an employer wishes to challenge a labor commissioner decision by filing an appeal, the employer is required to first post a bond with the court in the amount of the judgment rendered by the labor commissioner. Also, the employer must provide written notice that it has posted the bond with both the Labor Commissioner and the other parties. (See AB 2772 for more information)

More confusion with CA Pregnancy Leave:

Employers need to remember that under California's Pregnancy Disability Leave "PDL", the employee does not have any length of service requirement to qualify (unlike Family Medical Leave Act where the employee has to have been employed for 12 months and a required amount of hours ect.). This means PDL is available to an employee immediately after they are hired.

Mistakes about pregnancy, disability, and family medical leave continue to plague employers giving rise to more claims and lawsuits.

New Handbook available on line for I-9 and "document abuse" assistance

Effective 1-5-11, the US Citizenship and Immigration Service posted a new free handbook for employers to assist employers with proper I-9 forms, process and procedure and how to prevent "document abuse" and discrimination

regarding verification of employment.

Employers in CA beware of "sweeps" to check on Compliance

In 2010, the Division of Labor Standards Enforcement made a sweep "audit" of 162 Restaurants and issued 88 citations against employers for failure to provide worker's compensation coverage, not paying the proper minimum wage, and for failure to pay proper overtime compensation. The penalties were over \$448,000.

This means that again prevention and knowledge on the part of the business owner is essential to avoid being assessed fines, penalties and can help avoid costly lawsuits and litigation. Many business owners believe they do not have the "budget" to seek professional legal advice, and are later shocked when they are fined thousands of dollars which could have easily been prevented.

Obtaining earlier legal counsel and advice on how to "legal proof" your business is essential in these tougher economic times where lawsuits are more of a risk than anytime prior. Having someone to call with questions on an on-going basis is also essential.

Finally, every employer and business owner who employs even one employee should be sure to have "Employment Practices Liability Insurance" or "EPLI". Even if the employer has worker's compensation insurance, most policies do not cover "discrimination" claims under worker's compensation (called 132A claims) which means the employer will have to out of pocket the defense of those types of claims. Do not assume your general liability policy covers employment practices. Check with your insurance agent if you are not 100% certain.

Contact an Employment Law Attorney to ensure full legal compliance. The California Employment Law Training Center (<http://www.CAELTC.com>) is an excellent resource for all employers and is a Martinez Chamber member.

Jessica A. Braverman, Esq. owns the California Employment Law Training Center, a division of Braverman Mediation and Consulting where the focus is on preventative employment law advice, earlier dispute resolution intervention and employment law training. For free articles on Employment Law Topics go to www.BravermanSolutions.com and click on "articles".

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