

THE CALIFORNIA EMPLOYMENT LAW CORNER

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NEW EMPLOYMENT LAWS IN CALIFORNIA IN 2012 ARE YOU AT LEGAL RISK?

Without much press, notice, or attention, some newer employment laws have been passed in California that will go into effect January 1, 2012. Further, employers await the decision from the California Supreme Court on the meal/break Brinker cases, since oral arguments were heard in November 2011.

Business owners and employers must stay in compliance to avoid hefty fines and lawsuits. During the holiday season, be mindful that holiday parties often involve alcohol and inappropriate behavior. Be sure to stay on the safe side of legal risks.

Some new laws:

Restrictions on Credit Checks by Employers

Assembly Bill 22 prohibits employers from requiring credit checks on applicants unless the information is "substantially job related," which means the position of the person for whom the report is sought has access to money, other assets, or confidential information and they are in a managerial position.

Health Insurance for Pregnancy Disability Leave:

Making it more complicated for employers (more rules surrounding pregnancy leave), Senate Bill 299 passed and requires employers with 5 or more employees to continue health insurance for employees who take the 12 weeks of PDL, even if the employee is not covered by FMLA. This bill would prohibit employers from refusing to maintain and pay for insurance coverage for the duration of maternity leave and authorizes employers to recover insurance premi-

ums from the employee IF the employee fails to return from maternity leave IF that employee's failure to return from maternity leave is not due to leave taken under the Moore-Brown-Roberti Family Rights Act, for a health condition that entitles the employee leave, or for another circumstance beyond the control of the employee.

With the passing of Senate Bill 459, any willful misclassification of an independent contractor can give rise to fines up to \$25,000 per violation. It also requires employers to provide a form developed by the Employment Development Department to all "independent contractors." Finally, employers are required to maintain records for **two years** on all independent contractors hired by that employer.

New Notices to Employees:

Employers are now required to provide written notice to all new hires:

Specifically:

Labor Code Section 2810.5. (a) (1) At the time of hiring, an employer shall provide each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any "doing business as" names used by the employer.

(E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

Notice of changes to employee:

(b) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice

within seven calendar days after the time of the changes, unless one of the following applies:

(1) All changes are reflected on a timely wage statement furnished in accordance with Section 226.

(2) Notice of all changes is provided in another writing required by law within seven days of the changes.

(c) For purposes of this section, "employee" does not include any of the following:

(1) An employee directly employed by the state or any political subdivision thereof, including any city, county, city and county, or special district.

(2) An employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission.

(3) An employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

Some reminders:

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 four hours of work and their required 30 minute meal period every five 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.

Renew Your Sexual Harassment, Drug/Alcohol and Unlawful Harassment Policies with All Employees and Managers Before Employer Sponsored Holiday Parties

Holiday seasons are to be celebrated by all employees. However, holiday parties and gatherings traditionally are ripe for sexual harassment and other types of legal landmines for the employer especially when alcohol is involved. Best practices are to revisit your company policies with all employees and managers before the holiday parties begin and

remind everyone the rules/law apply especially at the holiday party. Start the new year without allegations, conflicts, and lawsuits!

Be sure you have Employment Practices Liability Insurance

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 pay out of pocket for 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 percent 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.

Have a super holiday season!

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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This is a regular column for the Martinez Chamber of Commerce Newsletter. However this is an informational column only and nothing written may be construed as legal advice. All readers should consult with a legal professional.

Chamber Cuisine



Little Hunan Restaurant is located just off Main Street at 621 Las Juntas. Although it is a bit off the beaten path, it is well worth it to find this restaurant that serves excellent Hunan style food. When you walk into Little Hunan you are greeted by colorful Chinese lanterns and Asian influenced art work on the walls. We were greeted by owner Vivian Ling who was warm and welcoming. The lunch menu was comprehensive, with 21 dishes priced at a reasonable \$6.50. For \$.75 more, there were more items including 12 prawn dishes. The menu has a great selection that includes highlighted hot dishes interspersed with dishes that were not hot.

Lunch included soup of the day, an eggroll, and a choice of chow mein, fried, or steamed rice. Today's soup of the day was hot and sour soup. One of my companions wanted wonton soup and Vivian graciously accommodated her wishes.

The hot and sour soup was delicious, thick and filled with all sorts of vegetables and egg in a rich dark broth with just the right amount of heat. The wonton soup was also filled with vegetables around a large wonton filled with pork. My friend declared it excellent.

From the lunch menu I chose the Prawns with Hot Garlic Sauce, Reba chose Beef with Hot Garlic Sauce, and Joyce chose Mongolian Beef. I selected their fried rice to accompany my lunch. The rice was wonderful. I don't usually like Chinese fried rice but this one was toothsome and filled with peas and egg. My lunch choice had an abundance of tender shrimp along with thinly sliced zucchini and carrot in a spicy rich sauce.

My guest was delighted with her choice of Beef with Garlic Sauce and she declared it the best Chinese food she had eaten in a long time. Her plate was filled with strips of tender beef along with al dente vegetables cooked in a zesty sauce. My other companion who ordered Mongolian beef was served a plate heaped high with strips of beef mixed with onion and cooked to perfection. The eggrolls served with lunch were crispy and stuffed full with pork and vegetable. Hot tea was the perfect pairing with our meal.

We had the chance to look at Little Hunan's dinner menu which was comprehensive and included favorites such as Chow Fun, Egg Foo Young and Mu Shu Pork. There were also new dishes that are not often offered like Beef with Lobster Sauce, Curry Chicken and several scallop dishes. They also have family-style dinners from \$10.95 to \$11.95 per person.

In closing, Little Hunan has generous portions with excellent service by the owner. They also deliver to within three miles. The value is excellent and the food surpasses most Chinese restaurants. I strongly suggest you take the time to visit this excellent eatery.

Congratulations to the September Business of the Month



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**Happy
Holidays**