



The Advisor

WHAT'S INSIDE

Page 2 Board Members;
President's Message

Page 3 Kin Care Law
Clarified

Page 4 The Long Term
Employee Vacation Trap

Page 6 Lerner Lines

Page 7 Certificate Program
2009 & Registration Form
for August 2008 Workshop

Page 8 Immigration
Landscape Continues to
Change

Page 9 .. Appellate Court Rules
That Employers Who Provide
Employees The Opportunity
to Take Meal and Rest Periods
Are Acting Lawfully

Page 10 An Update on the
Honor a Hero, Hire a Vet
24th Annual Ultimate
Career Fair

Page 12 EDD Offices in
Orange County

A Publication of the
Employer Advisory
Council of Orange
County in partnership
with the Employment
Development Department,
State of California

CEAC Legislative Report

by

Bruce Matlock, Esq. • EAC-OC Hotline

This is the fourth 2008 report on California legislation that may affect employers. I would appreciate any information on bills that I may have missed. If you want information on any of these bills or copies of the bill language, contact me or go to www.leginfo.ca.gov. Please do not rely on this report as legal advice, because it is not. If you need more detailed information you should contact your local attorney or give me a call.

Bills that did not pass their house of origin by the end of May are dead, though the subject can be introduced under a bill number that is still active. I have listed important bills of interest to employees first, including prohibition on using credit reports when hiring and prohibiting employers from firing an employee for using medical marijuana. I have also added a bill that I missed. It is AB1989, which amends the State Warn Act.

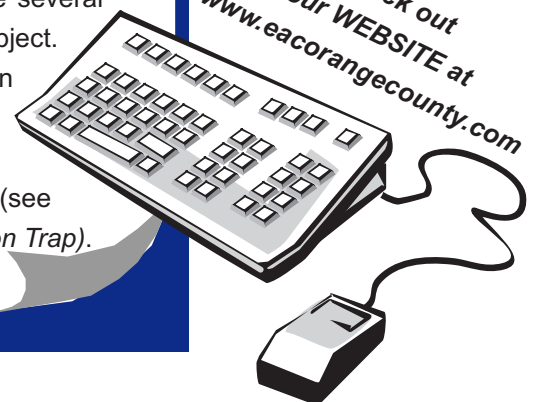
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Message From The Editor

In my introduction message, I invited suggestions on how the EAC-OC can make the *Advisor* more relevant and accessible to your businesses. Please feel free to forward topics that you would like to see covered or to provide other suggestions on how we can better provide information through the *Advisor*. You can reach me by email at jhart@littler.com.

You will notice some slight changes to this edition. Relevant excerpts to longer articles are included in this edition with references to the full article on the EAC-OC website. When possible, we are also attempting to include several articles related to a theme or subject. For example, this edition focuses on two topics that typically go hand in hand - sick leave (see *Lerner Lines* and *Kin Care* article) and vacation (see *The Long Term Employee Vacation Trap*). Feedback is welcome.

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our WEBSITE at
www.eacorangecounty.com





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President's Message . . .

by Stewart Lerner

Earlier this month, we completed our annual EAC-OC planning session. I always find this time exciting since it provides an opportunity to look back over the past year as well as ahead to the upcoming year.

We were pleased with our accomplishments as we conducted a record number of programs with the large majority getting strong reviews from our members. Feedback in this and other areas showed general membership satisfaction with our efforts. Despite rising expenditures, we feel we have been able to provide quality programming, nice locations and good food without significant increases in costs to our members.

Next year promises to offer more of the same. Robert Orozco, our hard-working Program Chair, has again brought an exciting slate of programs to the Board for approval. We expect to once again offer 9-10 workshops next year and are working on some special package deals and member incentives.

Jim Hart, our new *Advisor* Editor, is looking at some new formatting for our quarterly newsletter and we look forward to seeing the fruits of his labor. Walt Storch and Debbi Peterson continue to work hard on updates to our website that will make it more informative and user friendly. We are also looking forward to becoming more active in our local communities and adding to our current support for veterans, our EDD partners, and Orange County literacy programs.

I hope you have had the chance to meet our new Administrator, Barbara Bivens. Barbara has just completed her first year with our EAC-OC and is firmly committed to providing quality member service. Please contact our office if she can assist you in any way.

As President, I have been proud of our efforts and very grateful for the ongoing support from our loyal members. I look forward to great things the remainder of this year and on into 2009.

Kin Care Law Clarified

by

Daniel J. Cravens, Esq. and Lara K. Strauss, Esq.
Littler Mendelson

A California Court of Appeal holds that the state’s “kin care” law applies to sick leave policies providing an indefinite number of paid sick days, and also holds that employers may apply attendance disciplinary rules to the use of kin care to the same extent as applied to the use of paid sick days.

In *McCarther v. Pacific Telesis Group*, No. A115223 (May 23, 2008), a case of first impression, a California Court of Appeal held that California’s kin care statute – Labor Code section 233 – applies where an employer provides employees with an indefinite number of paid sick days on an as-needed basis. In essence, the court held that whenever an employer provides paid sick leave, it must comply with kin care obligations – no matter how it structures and calculates the sick leave entitlement.

The court also considered Labor Code section 234, which regulates employer absence control policies that discipline employees for using kin care. The court held that section 234 does not require special treatment of kin care for attendance discipline purposes. As long as employers treat kin care leave the same as sick leave in terms of discipline and attendance issues, they are in compliance with the law.

When Leave “Accrues”

Under Labor Code section 233, an employee may use “accrued” sick leave to care for a covered relative. In *McCarther*, the court clarified that sick leave counts as accrued leave under section 233 whenever the employee receives the right to take sick leave under the employer’s policy, even if the leave did not accrue over the course of the year and even if the total amount of sick leave is indefinite.

Attendance Policies

California Labor Code section 234 provides that if an employer has an absence control policy that disciplines an employee for using kin care leave under section 233 or otherwise treats the kin care as something that could lead to discipline, the employer automatically violates section 233. The employers argued that they should not have to comply with the kin care obligations because if they applied, section

234 would prohibit them from ever disciplining an employee for using kin care and could lead to a situation where an employee missed months of work for kin care without consequence.

The court rejected that argument. The court held that nothing in section 234 prohibits an employer from regulating

kin care leave, but it only allows such regulation on the same grounds as the employer regulates regular sick leave. An employer may impose attendance penalties or discipline on employees for the use of kin care leave as long as it would impose the same penalties or discipline for regular use of sick leave. An employer only violates the law when it penalizes employees more harshly for kin care absences than for sick leave absences for an employee’s own illness or injury.

Practical Implications

The court’s interpretation of Labor Code section 233 will have little practical affect for employers who

provide their employees with a definite number paid sick days.¹ However, employers that are not currently complying with California’s kin care provisions because their employees’ sick leave does not accrue in increments over time or does not provide a definite amount of sick days should immediately modify their policies and practices.

The court’s clarification on Labor Code section 234 will have greater impact. Many California employers have been operating under the assumption that kin care is a protected leave that must be excluded from their attendance policies in the same manner as CFRA and FMLA leave. The court opened the door for employers to impose discipline for excessive kin care absences so long as their attendance policies apply the same standards to kin care and the employee’s own sick leaves of absence.

¹ Under current law, a private employer has no legal obligation to provide employees with paid sick leave. The California legislature is, currently, considering A.B. 2716, which would impose an obligation to provide paid sick leave to all employees in the state. Such a bill would have far reaching implications, including guaranteeing all employees at least some kin care leave.

The Long Term Employee Vacation Trap

by
James E. Hart, Esq.
Littler Mendelson

A long term employee is set to retire. She claims that back in 1975 the company wrongfully withheld eight days of vacation. She also claims that in 1980 the company employed an illegal “use it or lose it” plan, which caused her to be denied another 12 days of vacation. She wants her final paycheck before retirement to include an additional 20 days of vacation pay, over and above what the employer believes it owes her. The employer does not have vacation records reaching back twenty or thirty years, and if the company fails to pay the employee all of her compensation owed they may owe an additional 30 days pay over and above the 20 days claimed by the employee under a provision of the Labor Code (section 203).

Until recently, the common response an employer would make to such a claim is that the employee is too late – that the employee cannot make a vacation claim that is 20 or 30 years old. The law establishes deadlines by which a legal claim must be made; these deadlines are known as statutes of limitations. The statute of limitation for an oral contract is two years and for a written contract is four years. An oral or written promise to provide vacation is commonly considered a contract. Under this statute of limitation argument, employers claim that the employee *accrued* the disputed vacation in 1975 and 1980 and had either two or four years from *accrual* to bring the claim or be barred by the statute of limitation.

The leading case to support this argument is *Sequeira v. Rincon-Vitova Insectaries, Inc.*, 32 Cal. App. 4th 632

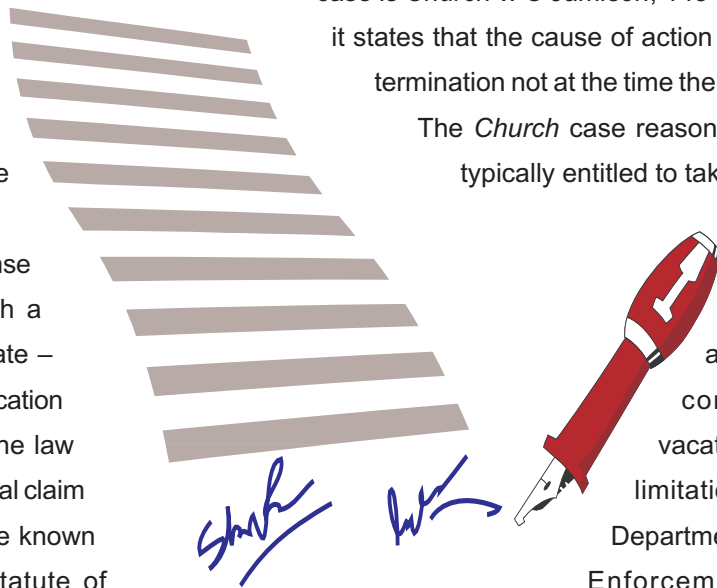
(1995), which states that an employee cannot revive stale claims for vacation time which vested more than four years before the date of termination even though the employee timely filed his claim for vacation after his termination. In *Sequeria*, a terminated employee claimed all unused vacation time accumulated over 12 years of employment, but was barred by the 4-year statute of limitations applicable to alleged breaches of written employment contract.

However a recent case disagrees with *Sequeria*. The case is *Church v. O’Jamison*, 143 Cal.App.4th 1568, and it states that the cause of action accrues at the time of termination not at the time the vacation was accrued.

The *Church* case reasons that an employee is typically entitled to take their vacation at any time during their employment, and it is not until they leave a company and are not compensated for the vacation that the statute of limitation starts to run. The Department of Labor Standards Enforcement (DLSE) that is

charged with resolving these disputes appears to side with the position in *Church* over the position in *Sequeira*.

As a result of *Church*, employers must take seriously the claims of employees that they have been denied vacation far back in the past. Practical obstacles (turn over, missing records, hazy memories) may make disputing these stale claims difficult and costly. Employers should therefore carefully consider the costs and benefits of disputing these claims.



Medical Marijuana, AB 2279 Leno: Would overturn recent California Supreme Court Decision and prohibit employers from refusing to hire applicants or terminating employees who use medical marijuana. There is an exception for “safety sensitive” positions. That criterion is spelled contained in the bill.

Senate Floor, 3rd reading 7/7.

Consumer Credit Reports, AB2918 Lieber: Would prohibit the use of consumer credit reports by employers. Amended to allow reports only where required by law and for “highly compensated or managerial” positions.

Senate Floor, 3rd reading 7/7.

California Warn Act, AB 1989. Current law, which applies to employers with more than 75 employees, requires that 60 days notice be given when there is a plant closing or mass layoff. This bill would also require such notice for “offshoring” business operations. The bill also increases the notice time to 90 days. It also changes the definition of a “mass layoff” from 25 employees in 30 days to 25 employees in 90 days.

Senate Appropriations Committee.

E-Verify Training, AB 2076 Fuentes: The original language would have required training for employers who use E-Verify. The amended bill would prohibit the State, unless required by Federal law, from using E-Verify, and would prohibit any city or country from requiring employers to use E-Verify.

Senate Floor, 3rd reading 7/7.

Tax Audits, AB 2879, Leno: Would require the Labor Commissioner to develop standards for when to notify tax authorities that an employer may deserve a tax audit.

Senate Appropriations Committee.

Mileage Reimbursement, AB 3061: Would put into the Labor Code the Labor Commissioners presumption that paying the IRS mileage rate is presumed to be reasonable reimbursement for using employee cars for company business.

Senate Labor, no action at request of author on 6/12.

Discharge for Garnishments, AB 3062: Under current law an employer may not terminate an employee for one garnishment. This bill would prohibit firing an employee for any garnishment.

Senate Floor, 3rd reading 7/7.

Conviction Records, AB 3063: With certain exceptions would prohibit asking an applicant about convictions that have been expunged.

Senate Appropriations Committee.

Final Pay, AB 2075 Fuentes: Independent Contractors, SB1583 Corbett:

A person who advises an employer, for money or other consideration, to misclassify a worker as an independent contractor would be as liable as the employer for back taxes, and other required payments and fines. Thank goodness the bill excludes attorneys.

Assembly Appropriations, Hearing 7/9.

Paid Family Leave and Unemployment Benefits, SB 1661 Kuehl: Would declare that an employee, who is terminated for taking Paid Family Leave, is eligible for Unemployment benefits.

Assembly Appropriations, Hearing 7/9.

Resurrected From The Dead

Meal Periods, AB1711 Levine: This bill was carried over from 2007. No action had been taken since 1/31/08. However, it was revived on 6/19/08 and given a hearing date. The hearing was cancelled at the author’s request. The bill would allow a meal period to be completed by the end of the 6th hour of work, instead of the current 5th hour. Defines “on-duty” meal periods and clarifies when a meal period may be waived for employees working more than 10 hours. Also would allow a prevailing party in a lawsuit over wage and hour issues to recover expert witness fees.

No Action Pending.

Lerner Lines - July 2008

by

Stewart Lerner, Lerner & Associates

The economic news continues to be grim. The Labor Department's latest unemployment report showed not only a loss of 62,000 jobs in June but revealed that job losses in April and May were significantly deeper than initially thought. "The economy has entered a slow-motion recession" said one leading economist. Another said "we're not crashing and burning; it's just not an economy that's going anywhere."

Meanwhile the unemployment rate was unchanged after shooting up 0.5% in May, the biggest one-month jump since 1986. However, some economists took little comfort in that report, noting that many workers have become discouraged and have stopped looking for jobs at all. This group would not be counted among the jobless because they have not actively sought new employment within the last four weeks. AND, on top of that, it is estimated that 5.4 million people were working part time because they were unable to find full-time work.

Given the state of the economy, it is interesting to review some workplace predictions made by Challenger, Gray & Christmas, Inc., a job placement consulting firm. They predict (1) the end of business travel, with corporations opting for teleconferencing; (2) four-day workweeks, given the cost of gasoline and the availability of portable technology; and (3) no more cubicles, with companies using common areas, conference tables and community work spaces to promote interaction and teamwork.

A number of important changes took place effective July 1st. By now, I am sure all of you are aware of the "hands-free cell phone" requirements impacting drivers. Please be aware, however, that if you have employees who may be required to use a cell phone while performing work-related duties, you may be required to provide a hands-free device for them. Also, you should review your employee handbook to ensure that it contains a policy prohibiting employees from using hand-held cellular phones while driving for business purposes or while discussing company business at any time. It should also contain provisions that employees charged with cell phone traffic violations will be responsible for any costs or liability in connection with those violations.

Unbelievably, after we waited several years for promised updates in the I-9 form, the feds have now come up with two new forms in a six-month period. Yes, there is now a new I-9 form that should be used for any new hires effective July 1st. To download this form, go to the USCIS website at www.uscis.gov/files/form/i-9.pdf.

The Internal Revenue Service (IRS), citing the drain that high gasoline prices are having on people's finances, has announced an increase in the automobile mileage rate that businesses and others can claim as tax deductions. This "standard rate" was raised from 50.5 cents a mile to 58.5 cents for the final six months of 2008. This change is important to employers because, in California, reimbursement at the IRS rate is presumed to constitute payment in full for business use of an employee's personal vehicle.

If you have questions or need assistance in implementing any of these new changes, please contact my office at 714-671-0202.

It is still very early but I have taken a look at some of the new proposed legislation and am convinced that SICK LEAVE will be the big issue at both the state and federal level. Here are some statistics that may serve as background for the push in this area.

According to the U.S. Department of Labor, 58% of U.S. workers currently receive paid sick days. This figure drops to 40% in companies with fewer than 25 employees. Employees receive an average of 10 sick days per year and take 3.9 days for personal illness and 1.3 days to care for family members. An amazing 49% of workers with paid sick days do not take ANY in a given year.

The proposed federal "Healthy Families Act" would guarantee that workers in companies with 15 or more employees receive at least seven paid sick days each year to care for themselves or sick family members.

California's proposed "Healthy Families, Healthy Workplaces Act" would allow both full and part-time employees to earn one hour of paid sick leave for every 30 hours worked (seven days per year for employees working 40 hours per week - if my math is correct.)

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Certificate Program for 2009

by

Robert Orozco, Program Chair

Our Certificate Program for 2009 has been finalized and we are very excited about it. We have a number of excellent speakers already signed on and are negotiating with a number of others.

If you wish to sign up for our August 2008 workshop, you can do so by sending in the registration form below. Here is a quick outline:

August – Keys to Successfully Navigating State Programs – Unemployment Insurance and Disability Insurance

Learn the latest techniques to more effectively handle your UI and DI claims in just three hours!

UI Topics:

- How to win more cases and protect your reserve account
- EDD decision making concepts that YOU must understand
- Keys to winning “Misconduct” cases
- Why Absence/Tardiness cases are so hard to win
- Voluntary Quits – Information you will have to provide to EDD
- Appeals— how to prepare and testify – tips to winning
- Special situations where your account will NOT be charged
- When NOT to protest an employee’s claim for UI benefits

DI Topics:

- Disability insurance updates
- Understanding DI contribution rates
- Proper completion of DI forms
- Changes in Paid Family Leave

October 2008 Workshop – Annual Wage and Hour Update

We will also be presenting several non-certificate programs in 2009 which will be announced shortly. One program you can prepare for now, however, is our annual New Laws and Legal Update program which will be presented in mid January.

Please reserve a place for me at the:

- August 21, 2008, workshop in Garden Grove
- August 26, 2008, workshop in Laguna Hills
- Member of EAC-OC (\$65.00) Member No. _____
- Non-Member (\$85.00)

Breakfast Workshop

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Immigration Landscape Continues to Change

*Scott K. Dauscher, Esq., Jonathan Judge, Esq., and Joanna L. Blake, Esq.
of Atkinson, Andelson, Loya, Ruud & Romo*

The following are excerpts from a longer article.

To access the entire article, please visit the EAC-OC's website at www.eacorangelcounty.com

This article updates employers on the three biggest developments regarding employers and immigration.

Ninth Circuit Rules That The Receipt of Social Security Administration (“SSA”) “No-Match” Letters Does Not Constitute Constructive Knowledge of Undocumented Status Under Immigration Reform and Control Act (“IRCA”).

The Court cited these four reasons to support its rule:

- (1) The no-match letters are not immigration-related, but rather are used to inform workers that their earnings are not being properly credited;
- (2) Multiple reasons exist for generation of no-match letters other than undocumented status, including typos, name changes, compound last names, and inaccurate or incomplete employer records;
- (3) The SSA, in its Social Security Number Verification Service Handbook, advises that a no-match letter does not make any statement about immigration status, and is not a basis in and of itself to take any adverse action against employees. (The most recent no-match letters now contain similar language. In 2003, however, the Ninth Circuit explained that the receipt of the no-match letter did not constitute constructive knowledge when the company in question, Aramark, received the letter, the letter did not); and
- (4) There is no penalty for not responding to the no-match letter.

Addressing whether the employees' failure to correct the no-match placed Aramark on constructive notice, the Ninth Circuit ruled that the employees were not given adequate time, ten days to respond to Aramark's demand to correct their information. The employees' failure to correct their information after ten days did not cause Aramark to have constructive knowledge that the employees were undocumented. The court noted that the proposed DHS Safe Harbor regulations provide 90 days to correct the no-match, and three days to submit a new Form I-9 if the Social Security number is not corrected. Employers should be aware that according to the Ninth Circuit a “no match” letter does not automatically condon immediate termination of an employee.

2.) President Proposes New Rule Requiring Federal Contractors to Enroll in E-Verify

On June 9, 2008, President George W. Bush signed Executive Order 13465. The Executive Order proposes a new rule, under which, federal contractors would be required to process all new hires, and all existing employees working on federal contracts, through the E-Verify employment authorization verification system. You may recall that E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (“USCIS”) in partnership with the SSA. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

The proposed rule is open to public comment until August 11, 2008, and a final rule will follow. There may be substantial changes to the rule before it is finalized.

3.) The Department of Homeland Security (“DHS”) Re-proposes Safe Harbor Regulations With No Change After Federal Court Stopped Government From Issuing No-Match Letters and Enforcing Safe Harbor Rule

You may recall that in August 2007, the DHS issued a final rule entitled “Safe-Harbor Procedures for Employers Who Receive a No-Match Letter.” The rule added a new standard for constructive knowledge under IRCA where employers fail to follow the DHS's Safe Harbor procedures in response to receipt of an SSA no-match letter. Shortly thereafter, unions and business groups joined forces to sue the government in federal district court and seek a preliminary injunction against the DHS from enforcing its Safe Harbor rule and the SSA from issuing its no-match letters.

On October 10, 2007, the court issued a preliminary injunction, stopping the DHS from enforcing its new regulations and the SSA from issuing no-match letters because if allowed to proceed, the mailing of no-match letters, accompanied by DHS's Safe Harbor procedures, would result in “irreparable harm to innocent workers and employers.”

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Appellate Court Rules That Employers Who Provide The Opportunity to Take Meal And Rest Periods Are Acting Lawfully

by
*Jon Miller, Esq. & Sarah Milstein
Littler Mendelson*

Employers have recently faced costly class action lawsuits claiming that employers deprive their workers of meal and rest periods. A key issue in many such cases is whether employers must “provide” employees with an opportunity to take meal and rest periods, or whether they must actually “ensure” that employees take them.

A long-awaited California Court of Appeal decision has answered this question in favor of employers. In *Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*, D049331 (July 22, 2008), a panel ruled that employers need only provide, *not* ensure, that employees take meal and rest periods. The court found the reasoning in two recent federal decisions, *White v. Starbucks Corp.* (N.D. Cal. 2007) 497 F. Supp. 2d 1080 and *Brown v. Federal Express Corp.* (C.D. Cal. 2008) __ F.R.D. __ [2008 WL 906517], that reached same conclusion, to be persuasive. The *Brinker* court agreed with *Starbucks* that:

“public policy does not support the notion that meal breaks must be ensured. If this were the case, employers would be forced to police their employees and force them to take meal breaks. With thousands of employees working multiple shifts, this would be an impossible task. If they were unable to do so, employers would have to pay an extra hour of pay any time an employee voluntarily chose not to take a meal period, or a shortened one.”

Key Facts

Brinker operates dozens of restaurants in California. Its meal and rest policy comports with California law, stating that employees are “entitled to a 30-minute meal period when [they] work a shift that is over five hours,” and are entitled to a “10-minute rest break for each four hours” so long as they work over 3.5 hours. In April 2006,

the Plaintiffs moved to certify a class of all present and former Brinker employees from August 16, 2000. Among other claims, the Plaintiffs sued Brinker alleging that Brinker (1) failed to provide rest periods; and (2) failed to provide meal periods in that Brinker had a policy of “early lunching” wherein plaintiffs took their meal period soon after they arrived, such that the plaintiffs’ first rest break could not be taken before its meal period. On July 6, 2006, the trial court ordered class certification. The appellate court reversed that order, reasoning that the trial court erred because it based its determination on “erroneous legal assumptions.”

Rest Breaks

Specifically, the *Brinker* court held “(1) while employers cannot impede, discourage or dissuade employees from taking rest periods, they need only provide, *not ensure*, that rest periods are taken; (2) employers need only authorize and permit rest periods every *four* hours or major fraction thereof and they need not, where impracticable, be in the middle of each work period.” The court ruled that the Labor Code, and the applicable regulations, intended to provide employers “some discretion to not have rest periods in the middle of a work period if, because of the nature of the work or the circumstances of a particular employee, it is not ‘practicable.’” The court also noted that employers need not “authorize and permit a first rest break *before* the first scheduled meal period.”

The *Brinker* court found that there was only evidence of *when* (not *why*) rest breaks were or were not taken. The court ruled that class certification was not proper as it could not determine on a class basis whether Brinker’s employees “missed rest breaks as a result of a supervisor’s coercion or the employee’s uncoerced choice to waive such breaks and continue working.”

An Update on the Honor a Hero, Hire a Vet 24th Annual Ultimate Career Fair

*by Abner Ivora, EAC-OC/EDD Coordinator, and
Stephan Traktman, Veteran Employment Services Specialist, EDD Anaheim*

The “Honor a Hero, Hire a Vet” Job Fair took place at the Angel Stadium in Anaheim on 5/21/08 from 9:00 am to 1:00 pm with approximately 80 employers and 800 job seekers in attendance. The available jobs covered industries from law enforcement/government, non-profits, and retail services with positions ranging from the service to the professional arenas. The Job Fair also made resources available to veterans from the County Vet Medical Center, as well as various Veterans Service organizations. The job fair focused mainly on Veterans; however, non-Veterans were welcomed to attend.

The EAC-OC donated \$1,000 toward the purchase of 1,000 blue vinyl folders with the logos of the EAC, VEC and EDD on the front, along with the “Honor a Hero, Hire a Vet” inscription. The VEC (Veterans Employment Committee) also contributed towards the purchase. The folders were initially distributed to veterans at the Job Fair, and the EDD continues to give them to veterans that come into the offices in Orange County.

On behalf of the Anaheim EDD Workforce Services office, we would like to once again thank the EAC-OC for their generous donation. Our veterans greatly appreciate having something to put copies of their résumés into when they go on interviews. The humanitarian aspects of EAC’s activities are clearly apparent, and make a great difference in the community at large.



Lerner Lines . . . from Page 6

Small employers (less than 10 employees) could limit the annual hours earned to five days. Unused sick leave time would carry over from year-to-year.

According to advocates, these proposed new laws are heavily supported by the public. They cite a similar law currently in effect in San Francisco that was so popular that even the people opposed to it did not mount a challenge. We will continue to monitor the progress of these important measures over the next several months.

There is some exciting news on the seminar front. On August 21 and 26, I will be doing a program on Unemployment Insurance, showing you how to win more cases and reduce charges to your reserve account. Joining me will be two EDD managers who will provide up-to-date information on how to more effectively manage the Unemployment and Disability Insurance programs.

Immigration . . . from Page 8

In its preamble to the rule to address the issues raised by the district court in issuing its injunction, the DHS hopes that its explanations will convince the court to remove the injunction once the final rule is published.

The comment period for the proposed rules ended on April 25, 2008. A final rule is expected to be published sometime this summer. A status conference regarding the preliminary injunction is scheduled for August 1, 2008, indicating that the final rule may be published before that date.

Because this is an election year, employers should not expect to see any new federal legislation addressing immigration issues due to the controversial nature of the issues. However, employers should anticipate movement on immigration legislation in 2009 regardless of whether Senator Barak Obama or Senator John McCain win the election, as both candidates have promised to address immigration issues.

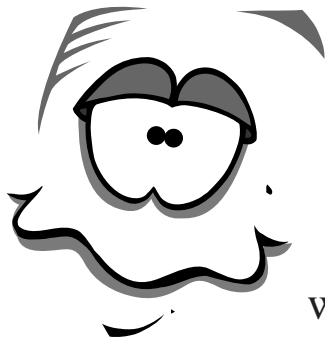
Meal Periods

The *Brinker* court also held that “while employers cannot impede, discourage or dissuade employees from taking meal periods, they need only provide them and not ensure they are taken.” The court of appeal rejected the trial court’s conclusion that Labor Code section 512 entitles employees to a 30-minute meal period every 5 hours. To the contrary, “employers are *not* required to provide a meal period for every five consecutive hours worked.” The court reasoned that section 512 creates a duty to make a “30-minute meal period available to an hourly employee who is permitted to work more than five hours *per day*, unless (1) the employee is permitted to work a ‘total work period per day’ that is six hours or less, and (2) both the employee and the employer agreed by ‘mutual consent’ to waive the meal period.” Furthermore, the court noted that section 512 is silent on *when* an employer must make the first meal period available. Thus, the appellate court found that the lower court’s certification order was based upon improper criteria.

What This Ruling Means

The *Brinker* decision is a victory for employers. However, this intermediate appellate decision will be appealed to the California Supreme Court. California employers can be encouraged by *Brinker* and a recent string of favorable federal district court rulings that have looked at this issue. Nevertheless, employers should still tread cautiously as this area of law is still unsettled, and will remain so until the California Supreme Court weighs in.

Employers can seek to protect themselves even before a lawsuit is filed. Written policies that comply with California meal and break requirements are a must. Documents which demonstrate that management schedules meal and rest periods, reminds employees that these breaks must be taken, and/or evidence of disciplinary actions for failure to take meal and break periods are also useful. Finally, records that accurately record what time off is (or is not) taken can be important.



Don't stop reading this just because it looks weird.

Believe it or not, you can read it.

I cdnuolt blveiee taht I cluod aulacly uesdnatnrd waht I was rdgnieg. The phaonmneal pweor of the hmuan mnid, aoccdrnig to rscheearch at Cmabrigde Uinervtisy, it deosn't mttar in waht oredr the ltteers in a wrod are, the olny iprmoatnt tihng is taht the frist and lsat ltteer be in the rghit pclae. The rset can be a taotl mses and you can sitll raed it wouthit a porbelm. Tihs is bcuseae the huamn mnid deos not raed ervey lteter by istlef, but the wrod as a wlohe. Amzanig, huh?

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EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)
Orange County Locations

OFFICE	ADDRESS	PHONE
Anaheim Job Service	2450 E. Lincoln Ave. Anaheim, CA 92806	714-518-2315
Anaheim Workforce Center	50 S. Anaheim Blvd. Anaheim, CA 92805	714-765-4350
Irvine One-Stop Center	125 Technology Drive #200 Irvine, CA 92618	949-341-8000
Westminster One-Stop Center	5405 Garden Grove Blvd. Westminster, CA 92863	714-241-4900
Santa Ana W.O.R.K. Center	1000 E. Santa Ana Blvd., Ste. 220 Santa Ana, CA 92701 (At the train station)	714-565-2610
Orange County Call Center	N/A	714-736-3000
Orange County Adjudication Center	N/A	714-687-4400
Santa Ana Disability Insurance	605 W. Santa Ana Blvd, Bldg. 28, Rm 735 Santa Ana, CA 92701	800-480-3287
Employment Tax Audit Area Office	2099 So St College Blvd., Ste. 401 Anaheim, CA 92816-6014	714-935-2920
EDD Labor Market Information	South County	949-341-8051
	North County	714-687-4816

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