



The Advisor

2006 Employment Law Update

by
Bruce Matlock, Esq.
EAC-OC Hotline

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While there were a number of bills introduced into the State Legislature in 2006, very few of them were enacted into law. You may access these bills by going to www.leginfo.ca.gov; click on "Bill Information," enter session 2005-2006, then bill number.

What is happening in 2007?

The legislature convened in early December and in the first two days, over 150 new bills were introduced. Several of them dealt with health insurance. In addition, the Governor is proposing major legislation on health insurance. That appears to be the major issue for this year.

Review of 2006 Developments

Minimum Wage Increase

Effective January 1, 2007, California's minimum wage increased to \$7.50 an hour. On January 1, 2008, the minimum wage will increase to \$8.00 an hour. In addition to increasing the pay for many workers, this change will also affect several other wage and hour provisions tied to minimum wage.

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News and Notes

Compiled by your
Employers Advisory Council of Orange County

NEW CELL PHONE LAW AUTHORIZED

California Governor Arnold Schwarzenegger has signed legislation that prohibits the use of handheld mobile phones while driving in the state. The legislation, which does not become effective until July 1, 2008, prohibits drivers from using a wireless telephone while operating a motor vehicle unless the driver uses a hands-free device, i.e., headphones. Drivers who violate the law will face a base fine of \$20 for a first offense and \$50 for each subsequent offense. California's law mirrors those previously passed in Connecticut, the District of Columbia, New Jersey, and New York, amongst others.

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Irvine, California

**EACOC OFFICE
EACOC/EDD COORDINATOR**

EAC-OC Office – Jean Gardner, Administrator
2001 East Fourth St., Suite 112
Santa Ana, CA 92705
Phone: 714/543-9916 • Fax: 714/543-9487
email: jgassocmgt@earthlink.net

**EAC-OC/EDD COORDINATOR – Martha Scarbrough
EDD Employer Services Team**
2450 E. Lincoln Ave., Anaheim, CA 92806-4272
Phone: 714/518-2355 • Fax: 714/518-2394
Email: mscarbrough@edd.ca.gov

President’s Message . . .

by Stewart Lerner

As we enter a new year, we have much to be excited about. Thanks to our ever-active program chair, Robert Orozco, we have a very ambitious schedule of workshops planned. Please review his column (on Page 10) for details on these exciting new programs.

For most of our members, December and January are the months to renew their memberships. If you have not already done so, please send in your renewal so that you can continue to enjoy your member benefits. Remember that one company membership allows all your employees to attend at member rates.

We continue to move ahead on our web site and hope to have news on that available shortly. We are also excited about adding some highly qualified new Board members to our roster during the early part of 2007 and extend a warm welcome back to Debbi Peterson. All-in-all, it should be a banner year for your EAC-OC.

As always, we thank you, our members, for your loyalty and support over the years. We wish you a happy and prosperous 2007.



Proposed 2007 Audit Schedule

by EAC-OC

The new year typically brings moments of reflection for the past year and its accomplishments. Now that you have had an opportunity to do that, it’s time to get back to work to ensure that your company’s policies are compliant with the new legal requirements. The job, while daunting, can be accomplished if you create a monthly “to do list” that will enable you to effectively complete this task. While the EAC-OC has devised a suggested timetable to assist you, most tasks can be completed at any time during the year. The key is to perform the audits.

January: Review leaves of absence policies
Ensure new hires are provided harassment training (performed on quarterly basis)

February: I-9 audit, including drafting and implementation of policies re responding to a ICE inquiry. Draft and implement policy re employee participation for protest.

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National Labor Relations Board Clarifies What it Means to be a Supervisor Under National Labor Relations Act

Authors: Thomas Lenz - Partner • Jonathan Judge - Associate

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On September 29, 2006, the National Labor Relations Board issued three rulings on the issue of supervisory status. These decisions were highly anticipated by the labor movement, which has long expressed fear that the NLRB would expand the definition of supervisors. The NLRB's need for the rulings flowed from a decision by the United States Supreme Court in the healthcare industry, where the Court found flaws in the NLRB's analysis of potential supervisory status based on one's authority to "assign" and "direct" employees and to exercise "independent judgment."

The NLRB's three rulings, involving three different employers and fact patterns, applied the NLRB's clarified analysis of authority to "assign," "direct," and to "exercise independent judgment" based on the applicable facts. The cases are discussed below:

Oakwood Healthcare, Inc.

In *Oakwood*, the NLRB found that certain charge nurses at an acute care hospital are supervisors based on their delegated authority to assign employees using independent judgment. As a result, the 12 charge nurses in question were excluded from the employee bargaining unit and their votes will not count in Oakwood's representation election.

At the heart of the issue in *Oakwood* is who is considered a supervisor under the National Labor Relations Act. Under the 2001 United States Supreme Court decision in *NLRB v. Kentucky River Community Care*, individuals are considered statutory supervisors if:

- (1) they hold the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances;
- (2) their exercise of such authority is not of a merely routine or clerical nature, but requires use of independent judgment; and
- (3) their authority is held "in the interest of the employer."

In *Oakwood*, the NLRB decided whether certain charge nurses had the ability to "assign" or "responsibility to direct" employees under them, and whether they did so using "independent judgment." In doing so, the NLRB clarified the meaning of these three terms.

The NLRB defined "assign" as the act of designating an employee to a place (location or department), appointing an employee to a time (shift or overtime), or giving significant overall duties or tasks to an employee. The NLRB clarified that to assign refers to the designation of significant overall duties to an employee, but not to ad hoc instruction that the employee perform a discrete task.

The NLRB then illustrated the term "responsibility to direct" as a person who has employees under him, who decides what job shall be undertaken next or who shall do it, who is accountable for the performance of the task by others, and who has authority to take corrective action.

Finally, the NLRB defined "independent judgment" as acting free of the control of others and forming an opinion or evaluation by discerning and comparing data, involving a degree of discretion that rises above the routine or clerical.

Applying these definitions, the NLRB found that certain nurses are supervisors based on their delegated authority to assign employees using independent judgment.

The NLRB found that the charge nurses at Oakwood do not responsibly direct the nursing staff. Charge nurses are not held accountable for the performance of tasks delegated to others, and the charge nurses are not required to take corrective action if other staff members fail to perform the tasks.

On the other hand, the NLRB found that the charge nurses' assignment of patients to other staff, and assignment of nurses to specific geographic locations met the definition of assign. The NLRB then found that the charge nurses use independent judgment, for example,

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Exempt Employees: Under current law, exempt employees must, in addition to being paid on a salaried basis, and meeting the job duties test, be paid twice minimum wage. The new rate for exempt employees is \$31, 200 a year. The rate in 2008 will be \$33, 280.

Exempt Commissioned Inside Sales: These employees are exempt if 50% of their pay is from commission and their weekly earnings are not less than 1-1/2 times the minimum wage.

Piece rate employees must make the equivalent of the new minimum wage.

Split shift employees must earn at least one hour at the minimum wage above minimum wage for time worked.

Tools and Equipment: Employees may be required to furnish and maintain their own tools and equipment where that is commonly required by their trade or craft if they earn at least twice minimum wage.

Harassment Training: In 2005 all California employers with more than 50 employees were required to provide 2 hours of training on the prevention of harassment, discrimination and retaliation to all supervisors. The training must be given every 2 years and to new supervisors within 6 months of hire or promotion. The Fair Employment and Housing Commission has issued revised regulations that clarify that only supervisors in California must be trained. The rules also allow an employer to use a calendar year basis for training. For example, if supervisors were trained in June of 2005, they can be trained anytime in 2007. The rules also clarify the minimum qualifications for trainers and the use of web based training.

Regulatory Rulings

Mileage: The IRS has raised the mileage rate to 48.5 cents for 2007. This rate should be paid to employees for using private vehicles for business purposes.

Partial Day Payment for Exempt employees: The Division of Labor Standards Enforcement (DLSE) has revised the rules for partial day deductions for exempt

employees. If an employee has not worked at least 4 hours of a workday for personal business, it is now legal to deduct PTO or Vacation in minimum increments of 4 hours. If the employee is ill and entitled to PTO, than only 4-hour increments may be deducted from PTO. An exempt employee may have Sick Leave deducted in smaller amounts when the employee has a sick leave plan, which does not provide for payoff on termination. However, if the employee has used all sick leave or has not yet earned sick leave, only entire workdays may be deducted without pay. It is strongly recommended that you check with Counsel before making any deductions for Exempt employees.

Pay Check Stubs: Employees may agree to receive an electronic wage statement (pay check stub) instead of a hard copy.

Rest Periods: Employer is not subject to penalties if a non-exempt employee “freely” chooses without coercion or encouragement” to forego or waive a rest period.

Court Cases

At-Will Employment: The courts continue to uphold “at-will” statements signed by employees.

Non-Compete Agreements: In the most recent California case, an Appeals Court reaffirmed that “Non-Compete” agreements are void in California. The Court also ruled that requiring an employee or applicant to sign such an agreement is a recognizable wrong for which the employee can obtain civil damages.

Exempt Status: A number of class actions have been filed challenging the exempt status of middle managers.

Meal and Rest Period Violations: These continue to be an area of potential liability for numerous employers.

New Legislation

SB 1759: Requires Health Care Workers and Administrators in Home Health Companies to obtain a background check from the Department of Justice using fingerprints. Cost is paid by the applicant.

AB 2067: Clarifies that smoking is prohibited in enclosed places of employment, including lobbies, stairwells, elevators and restrooms.

SB 1613: Limits cell phone use while driving to hands free operation, effective 1/1/08.

AB 2613: Classifies Elementary and Secondary Private School Teachers as exempt if they earn twice minimum wage, and have either a BA or Teaching Credential.

AB 2440: Imposes a penalty on an employer who helps a worker evade child support obligations by not filing a new hire, or independent contractor report with EDD, or paying wages not reported to EDD. The employer can be held liable for the full amount of child support not paid by the worker.

AB 2095: Permits paying and reporting overtime in the pay period following the pay period in which the overtime was worked.

AB 2695: Allows an employer to obtain a restraining order against a threatening individual that covers multiple employees and work sites.

AB 881: Requires all roofing contractors to maintain worker's compensation insurance even when the contractor does not have current employees.

SB 1436: Requires all state agencies to have a small business liaison and a web link for small business access.

SB 546: Outlaws the use of state-owned or state-leased computers by government officials or employees to access obscene materials.

Vetoed Legislation

SB 840: Would have created a state sponsored universal health care system to replace private insurance.

SB 1414: Would have required employers with more than 10,000 employees to provide health care or pay a tax to the State.

SB 1281: Would have required State contractors with more than 100 full time employees to provide up to five days a year of paid jury duty.

SB 815: Would have increased the permanent disability benefits under worker's compensation.

Finally, Only In San Francisco

Employers in San Francisco are required to provide 1 hour of paid sick leave for each 30 hours of work, with a maximum accrual of 72 hours. Employers with 10 or fewer employees have a maximum accrual of 40 hours.

This update is intended to provide general information regarding employment laws in California. Its contents are based on recent statutes and decisions, but should not be viewed as legal advice or legal opinions whatsoever.

Minimum Wage Increase and Required Employer Posters

by

*Pamela Marantz Esq. & Alyson Leichtner, Esq.
Murchison & Cumming*

As you may be aware, Governor Schwarzenegger signed SB1835, which makes California's minimum wage one of the highest in the United States. On January 1, 2007, the first increase took effect, increasing the minimum wage for California's non-exempt employees from \$6.75 per hour to \$7.50 per hour. Further, on January 1, 2008, the minimum wage for California's non-exempt employees will increase to \$8.00 per hour. This increase will also affect exempt employees whose minimum salaries are connected to California's minimum wage. On January 1, 2007, the minimum salary for exempt employees increased from \$2,340 per month to \$2,600 per month. On January 1, 2008 the minimum salary for exempt employees will increase from \$2,600 per month to \$2,773.33 per month. Please note that as of January 1, 2007, California employers are required to post a new state minimum wage poster and wage order. Further, besides the state minimum wage poster and wage order, California employers must also post information regarding other employment issues, including, but not limited to the following issues: workers' compensation benefits; pay schedule; and emergency contacts. You can access and download such posters at www.dir.ca.gov/wp.asp.

based on the nurses' consideration of specific patient conditions and needs, staff's special training or certification, the continuity of care, and geographic location of the patient's room in making assignments. The NLRB noted that such analysis involves a degree of discretion markedly different than the assignment decisions exercised by most leadmen.

Croft Metals and Golden Crest Healthcare Center

The NLRB decided two other supervisory cases that same day based on the standards established in *Oakwood: Croft Metals* and *Golden Crest Healthcare Center*.

Croft involved the supervisory status of approximately 35 lead persons at a manufacturer of aluminum and vinyl doors. The NLRB concluded that the lead persons at *Croft* do not exercise the required authority of supervisors.

The NLRB found that the lead persons' duties do not meet the definition of assign. The lead persons do not prepare the posted work schedules, appoint employees to production lines, departments, shifts, or overtime, nor give significant overall duties to employees. For the most part, the lead persons work along side their regular line or crew members.

On the other hand, the NLRB found that the lead persons have the authority to responsibly direct their line or crew members. As part of their duties, the lead persons are required to manage their assigned teams, to correct improper performance, move employees when necessary to do different tasks, and to make decisions about the order in which work is to be performed. The NLRB also found that the lead persons are held accountable for the job performance of the employees assigned to them.

The NLRB, however, did not find that the lead persons use independent judgment. Instead, the lead persons follow a pre-established delivery schedule and generally employ a standard loading pattern that dictates the placement of different products in trucks. The employees require minimal guidance, and the judgment involved in directing the crews was described as "routine." The NLRB could not conclude that the degree of discretion involved in these activities rises above the routine or clerical.

In *Golden Crest*, the NLRB found that the 19 charge nurses in question were not supervisors. The charge nurses do not have authority to assign, but have authority

to direct Certified Nursing Assistants (CNAs). However, the NLRB found that charge nurses are not held accountable for their actions in directing CNAs.

What This Means For Employers

Critics of the *Oakwood* decision decry that it "threatens to create a new class of workers under federal labor law." However, as demonstrated in the above decisions, charge nurses and lead persons have not all become supervisors under the NLRA. In fact, only 12 out of a total of approximately 235 workers in the three cases combined were found to be supervisors. These decisions demonstrate that supervisory status is determined on a case-by-case basis, the definition for which now has increased clarity. Workers must still meet various requirements to qualify as a supervisor. Thus, employers cannot strip employees of their NLRB rights by merely reclassifying them as supervisors in title only.

Also misplaced is the worry that employees of restaurants, retailers and other businesses will be classified as shift supervisors even though their duties are indistinguishable from those they supervise. As the NLRB found in *Croft*, where the employees do not give significant overall duties to other employees, they will not be considered supervisors.

The NLRB's rulings will apply in numerous cases, as supervisory status questions are among the most frequent in labor law. The decisions are likely to affect those employers where union organization is currently taking place, affecting who can vote in a representation election. In such cases, employers may be inclined to argue that some employees are or are not supervisors. Depending on their value to a union in a campaign, unions may take the same position. Likewise, unions will likely use the analysis to claim that certain people are supervisors, if the union desires leverage against an employer and it would benefit the union to allege that the so-called supervisor committed an unfair labor practice. On the other hand, employers will continue to assert, as they have for decades in their defense, that certain individuals are not supervisors whose words or deeds are binding on the company for unfair labor practice liability.

For employers with existing collective bargaining

At-Will Employment - Alive and Well in California

by

Paul S. Fleck, Esq.

Atkinson, Andelson, Loya, Ruud & Romo

The at-will defense continues to be employers' first line of defense in wrongful termination cases levied by former employees. Under California law, employment is presumed to be at-will. This means that employment is for no specified term and may be terminated at the will of either party upon notice to the other. *California Labor Code* § 2922.

In the recent case, *Dore v. Arnold Worldwide, Inc.* 39 Cal. 4th 384 (2006), California employers received confirmation that the at-will employment status is alive and well in California – as long as employers take the proper steps to preserve this defense.

Dore, a former employee of Arnold Worldwide, Inc (“AWI”), sued AWI claiming that he could only be terminated for cause. However, a hiring letter from AWI to Dore stated, “Please know that as with all of our company employees, your employment with Arnold Communications, Inc. is at will. This simply means that Arnold Communications has the right to terminate your employment at any time just as you have the right to terminate your employment with Arnold Communications, Inc. at any time.” Dore claimed that various oral

representations, conduct, and documents led him to reasonably understand that he would not be discharged except for cause.

However, in a good result for employers, the California Supreme Court held that the written contract between Dore and AWI was unambiguous, and that the term at-will in an employment contract means “at any time without cause.” Therefore, the at-will provision could not be overcome by evidence of a prior or contemporaneous implied-in-fact contract requiring good cause.

What does this mean for employers?

Employers must do all that they can to preserve the at-will status of their employees. This includes informing employees of their at-will status, in writing, in as many forms as possible. Therefore, appropriate at-will language should be included in the following employment documents: initial offer of employment; employment application; employee handbook; and a stand alone at-will agreement. This will assist employers in their efforts to establish that employment with the company remains at-will.



News and Notes . . . from Page 1

The law allows drivers to use a wireless telephone for emergency purposes, drivers of commercial vehicles to use push-to-talk phones until July 1, 2011, and allow drivers of emergency response vehicles to use a cell phone without a hands-free device. The law, however, does completely ban the use of cell phones by school bus drivers or public transit drivers.

With the National Traffic and Highway Safety Administration (NHTSA) estimating that cell-phone related accidents are on the rise, with distracted drivers contributing to over 25% of all police-reported accidents, employers should develop a policy regulating the use of cell-phones used by its employees.

An employer's cell phone policy should incorporate the following elements:

- Language stating that employees will follow all federal, state, and local laws regarding cell phone use
- Use a hands-free phone
- Requirement of headsets to be used by employees
- Keep your eyes on the road at all times
- Placing calls while car is in stationary position or legally parked
- Prohibition of receiving/responding to email
- Avoid using your phone in bad weather or heavy traffic
- Avoid stressful conversations while driving
- Never look up phone numbers while driving

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The company should also ensure that it has policies describing the authorized use of employer-issued cell phones as well as a reimbursement policy for employee-owned phones.

“Supervisors” Subject to Sexual Harassment Training Requirements

One significant change to current California law impacting employer liability is AB2095 which amends Government Code section 12950.1. Previously Government Code section 12950 only required “supervisory employees” to be trained in mandatory sexual harassment training and prevention. The clarification of “supervisory employees” arose due to employers having multiple locations outside of California’s jurisdictions. The Legislature amended 12950 to clarify that only supervisors located in California must receive mandatory training.

However, as a practical matter, employers should consider training all supervisory employees, wherever they are located, in order to minimize potential liability. The training of all supervisory employees is especially critical given the expanded definition of “supervisors” under recent court decisions. See generally, *Chapman v. Enos* (2004) 116 Cal. App. 4th 920 (defining supervisor as those who have “responsibility to direct work”).

If you need assistance with your harassment training, please contact EAC-OC Administrator Jean Gardner at 714-543-9916 for a list of recommended EAC-OC trainers.

Accounting For Overtime Hours On Payroll Statements

Assembly Bill 2095 amends Labor Code section 204, which specifies the periods required for payment of wages. The existing statute provides that all wages earned by employees are due and payable twice each calendar month on days designated by the employer; however, “wages earned in excess of the normal work period” (e.g., overtime wages) may be paid by no later than the next consecutive payday. This statute is inconsistent with Labor Code section 226(a), which requires that employers provide each employee at the time of each payment of wages an itemized statement showing, among other things, the total hours worked by the employee during that

pay period. AB 2095 reconciles these two conflicting requirements. The amendment essentially provides that an employer is in compliance with the above-mentioned provision of Labor Code section 226(a) if overtime hours worked in a current pay period, but paid in the next consecutive period, are “itemized as corrections on the pay stub for the next regular pay period.” The amendment further requires that such corrections state “the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

With the beginning of a new year, employers should conduct audits of its policies and practices to ensure that they are compliant with new laws. Given the significant increase in class actions involving the payment of wages, employers would be well served to remind all employees, either through individual memorandum (email) or other mass communication (posting), to ensure that all employees’ paychecks are proper. Sample language: *We made approximately _____ changes in payroll since the last pay period of 2006! You are the final auditor of those changes which apply to you. Please look closely at the stub you received to make sure that things seem right to you. If you have any questions, please contact HR/Payroll immediately.*

This language can be modified for the employee’s acknowledgement that their hours/wages are correct. If the employer is using language to ensure that an employee is receiving their correct wages for a particular pay period, ensure that the employee’s acknowledgement is in writing.

State Discrimination and Harassment Materials Available Online

Assembly Bill 1806 amends Government Code section 12950 to require that the California Department of Fair Employment and Housing (DFEH) make available online its employment discrimination poster (Form 162) and sexual harassment information sheet (Form 185). Under existing law, employers must post the poster in a prominent and accessible location in their facilities, and distribute the harassment sheet to all employees. These materials may be downloaded from the DFEH Web site: www.dfeh.ca.gov

Lerner Lines

by

Stewart Lerner

Lerner & Associates

The first economic report of the new year was a positive one, showing strong employment and wage growth. The Labor Department reported that employers added 167,000 jobs to their payrolls in December, substantially more than the 110,000 expected. The job growth was also enough to hold the unemployment rate steady at a low 4.5%.

Average hourly earnings of production workers jumped to \$17.04, an increase of 0.5% from the previous month. For all of 2006, average weekly wages climbed 4.5%, more than enough to keep workers ahead of the 2% inflation during the same period.

Workers, hoping that this trend will continue in the coming year will find cheer in the 2007 projections. Employees are expected to see their paychecks grow by about 3.5% in 2007. However, raises could be limited by rising costs in health insurance and other employee benefits.

In fact, Lerner Lines predicts that changes in the areas of health coverage and workers' compensation will once again cause economic challenges for California employers. Let us begin with workers' compensation where there appears to be a strong push to limit what some feel are the too stringent medical reviews currently required by insurers and conducted by specialized physicians. New proposed regulations go as far as to punish insurance companies that wrongfully delay or deny medical care for workers injured on the job. These new regulations have drawn strong support from worker advocates and opposition from insurers. Clearly, expected changes in the review process will result in increased workers' compensation costs.

However, even the WC issues will be dwarfed by the battles that will be taking place in the health care arena. As we go to press, the governor has just announced his plan to make health care available for every Californian. As part of his plan, employers with 10 or more workers would have to offer employee plans that cost them at least 4% of their payroll. Those who refuse would be required to pay an equivalent amount into the state's insurance

fund. In addition to the governor's plan, there are other bills pending in the Assembly and the Senate that will require employers to fund health insurance though a percentage of wages. There is also pending legislation that would provide universal health insurance by replacing insurance companies with a statewide trust fund that would collect premiums from both employers and individuals. It should be a very interesting year!

I am sure you all are aware of the change in minimum wage that became effective on January 1, 2007. However, you may not be aware of the requirement to update your posters and/or your CA Industrial Wage Commission Wage Orders to reflect this change. The Meals and Lodging sections have also been updated along with information about reporting complaints to the Division of Labor Standards Enforcement.

I was greatly troubled when I recently received an "Employee Rights Newsletter" via e-mail from a company calling itself LLN, Inc. This document asked employees questions like:

"Are you paid for all of your overtime?"

"Are you paid for the time you spend driving from work site to work site or from appointment to appointment?"

"Are you paid for time spent preparing for your shift, safety meetings and supervisor meetings?"

"Are you paid for time spent putting on and taking off your uniform?"

"Do you know the legal definition of harassment?"

Obviously, these mailings are aimed at getting employees to file complaints against their companies. I have no way of knowing the volume sent or the mailing list that is being used by this organization. However, they certainly could cause problems for your company.

Your best defense against this type of mailing is to review your policies and procedures and ensure that you are in full compliance.

One final reminder – if you conducted your required sexual harassment training in 2005, you will need to provide refresher training in 2007.

Have a wonderful New Year!

2007 Calendar of Events Theme: “Employee/Employer Relationship - From Hiring to Firing”

by Robert Orozco – Program Committee Chair
Atkinson, Andelson, Loya, Ruud & Romo

2006 was a year of transition for your EAC-OC. While we increased the number and participation of members, we also lost the contribution of others. In spite of these ordeals, your EAC-OC remains committed to addressing the needs of its membership. We believe that the seminars offered to our membership are not only the best educational seminars presented in Orange County, but also the most reasonably priced.

For those of you registered in our certificate program, your EAC-OC board has embarked on a theme this year to allow a greater examination of the issues affecting you in your daily operations. In order to increase the educational value and financial rewards that these seminars offer, your EAC-OC has embarked on a theme this year to allow a greater examination of the issues affecting you in your daily operations. This year’s theme is the “Employee/Employer Relationship - From Hiring to Firing.” Traditionally, “hiring and firing” has been discussed in one marathon 3-hour session. However, the critical phases of the employment relationship from hiring-to-firing has been broken down to critical components: pre-offer, performance reviews, and termination. The separation of these aspects into three separate and distinct seminars will permit a greater examination of the issues impacting each phase of the employment relationship. The certificate program, their topics, and speakers are listed below:

CERTIFICATE PROGRAM 1 • FEBRUARY 2007 – “Pre-Hiring, Hiring & Orientation”

Garden Grove: Feb. 15; Laguna Hills: Feb. 20

- ◆ Pre-hire and hiring strategies
- ◆ Review and analysis of forms employees must complete during orientation period

CERTIFICATE PROGRAM 2 • APRIL 2007 — “Employee Coaching and Discipline”

Garden Grove: Apr. 19; Laguna Hills: Apr 24

- ◆ Performance reviews and evaluations
- ◆ Action plan for clear-cut and fair disciplinary procedures

CERTIFICATE PROGRAM 3 • JUNE 2007 — “Discrimination/ Harassment and Internal Investigations”

Garden Grove: June 21; Laguna Hills: June 26

- ◆ Review of state and federal statutes and regulations
- ◆ Framework for conducting effective workplace investigations

CERTIFICATE PROGRAM 4 • AUGUST 2007 — “Leaves of Absence”

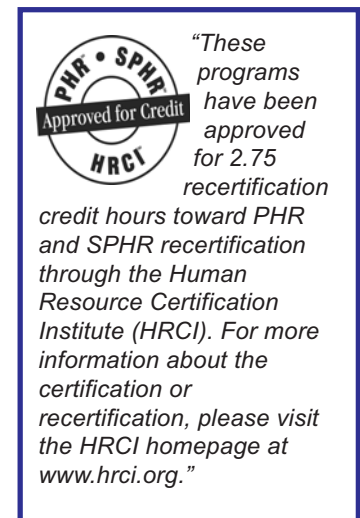
Garden Grove: Aug. 16; Laguna Hills: Aug. 21

- ◆ Review of statutes and regulations and flag common pitfalls
- ◆ Intersection of family/medical leave in relations to workers compensation statutes

CERTIFICATE PROGRAM 5 • OCTOBER 2007 — “Terminating Employees With Safety and Dignity”

Garden Grove: Oct. 18; Laguna Hills: Oct. 23

- ◆ Handling a post-termination claim
- ◆ Proper protocol and policies for disciplining and terminating an employee



In addition, the EAC-OC remains committed to introducing other seminars that are also essential to any employer's success. Our non-certificate program includes old favorites such as "Wage & Hour Update" and "Workers' Compensation Update" as well as new topics such as "How to Properly Conduct an Internal Harassment Investigation." A complete list of the non-certificate program is listed below:

___ MARCH 15, 2007 — "What's New in Workers' Compensation"
Hyatt Regency Orange County, Garden Grove

___ MAY 2007 — "Seven Deadly Sins of Employee Handbooks"
Garden Grove: May 17; Laguna Hills: May 22

___ SEPTEMBER 2007 — "Wage and Hour Update"
Garden Grove: Sept. 20; Laguna Hills: Sept. 25

___ NOVEMBER 15, 2007 — "Seven Things Employers Did in 2007 to Get Sued"
Hyatt Regency Orange County, Garden Grove

2007 Breakfast Workshops - Registration Form

Complete this form and fax it to 714/543-9487 or call the Association Office 714/543-9916 with credit card information. EAC-OC accepts cash, check and NOW Visa, MasterCard and American Express.

Cost:) \$249 Members \$349 non-members 5 Certificate Programs
 \$60 Members \$80 non-members Each individual workshop

Membership: \$95/year ___ Yes, add \$95 for one-year membership

Name _____ E-Mail _____

Company Name _____ Phone _____

Amount of check or charge: _____ for number _____ of people attending: _____

Method of payment (check one): Check MasterCard Visa American Express

Name on Card: _____ Card Number: _____

Expiration date: _____ Last three numbers on back of card _____

Card Billing Address _____

City _____ State _____ Zip Code _____

Signature: _____

Please make check payable to **EAC-OC** and mail to 2001 East Fourth St. #112 • Santa Ana, CA 92705
Telephone: 714 / 543-9916 • Fax: 714 / 543-9487 • E-Mail: jgassocmgmt@earthlink.net
Cancellation Policy: No refund(s) unless we receive written notice of cancellation in our office 72 hours prior to the event.

Finally, the EAC-OC is introducing a new pricing structure for 2007. The costs for attending the seminars are listed within the Registration Form above. If you have any questions on possible discounts, please contact our administrator Jean Gardner at (714) 543-9916 or jgassocmgmt@earthlink.net.

As you can see, with these seminars, this year's calendar of events is the most ambitious program to be undertaken by your EAC-OC. We are confident that the seminars offered this year will address your needs and concerns as employers and business leaders in our great State. We look forward to seeing you at our various events throughout the year!

Proposed Audit . . . from Page 2

March: Review and revise application procedures ensuring that potentially discriminatory questions are removed. Review and revise performance evaluations.

April: Start review of employee classification, e.g., non-exempt vs. exempt, with job description

May: Review Injury/Illness Prevention Program for effectiveness.

June: Update emergency contacts and procedures.

July: Train supervisors and others involved in performance evaluation/hiring on proper protocol.

August: Review harassment policy for effectiveness; train appropriate personnel in investigative techniques.

October: Verify employee exempt or nonexempt status during review with employee [have employee sign-off on their description of duties].

November: Adjust exempt or nonexempt employees' status based on their performance review or classification.

December: Renew and update 2008 compliance posters. Ensure that any bonus wages are properly calculated.

National Labor Relations . . . from Page 6

relations, the decision allows newly classified supervisors to be removed from the bargaining unit through NLRB procedures or bargaining. However, such employers may be reluctant to deviate from the status quo.

It is anticipated that there will be extensive litigation to interpret these rulings. The facts of each situation will continue to control analysis in these future cases. There is no broad brush of disenfranchisement as many labor groups contend.

Finally, it must be noted that *Oakwood* is limited to NLRB supervisory issues. It does not affect the definitions under the Fair Labor Standards Act, or California wage and hour laws, which are the basis for a separate category of misclassification cases for exempt and non-exempt employees.



Welcome Back, Roberta!

by

Rob Claudio, Orange County Regional Manager Job Service

Some of you might remember Roberta Masek from the work that she did when she supervised Jayne Archuleta a couple of years ago in the Anaheim J.S. Office.

A familiar face and a dynamo of energy returns to the Anaheim Office as Roberta has just begun her new job as the newly appointed Field Office Manager in Anaheim. With over 20 years of management experience and over 10 of those years previously in the North Orange County area, Roberta, brings a wealth of knowledge, as well as new ideas from the work that she had been recently involved with while working as the Irvine Site Manager in South Orange County. In previous years, Roberta, spent a good amount of her time working with the OC-EAC and its board members. Among many projects, she initiated a Partnership that brought exposure to the EAC at the Orange County Fair, when we staffed a booth during the summer. In addition, she had a myriad of opportunities to promote the OC-EAC, through her work in various job fairs for the Youth, Older Workers, Experience Unlimited Professionals and Veterans. I am certain that Roberta will be re-visiting some of those previously established relationships as she transitions into her new position. Please join me in congratulating Roberta as she begins a new journey among old friends in our North Orange County Region.



This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal or other professional service. If legal advice or expert assistance is required, the service of a competent professional person should be sought.

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	P.O. Box 1466	800-480-3287
	Santa Ana, CA 92701	
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

The relationship between the California Employment Development Department (EDD) and the Employer Advisory Council (EAC) is defined as a partnership. "The partnership's commitment to both the employer and the worker is to improve EDD services, increase cooperation and communication among EDD and the private sector, and to increase employer's knowledge of EDD programs and services."