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Human Resources Guide

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What Kind of Manager Are You?

Pick the best qualities of different managerial types and perfect your own style

by Brett Good, District President, Robert Half

There are as many different ways to manage employees as there are managers. Still, it's possible to divide the wide range of management styles into a few major categories. Determining where you might fall in these groupings can help you become more aware of your strengths and weaknesses and, as a result, help you become more flexible and effective in an increasingly diverse workplace. Which of the following best describes you and what can you learn from the plusses and minuses of each?

The Challenger

***Pros**:* Pushes employees to ever-higher levels of efficiency, productivity and excellence by continually questioning the status quo. "Adequate" and "sufficient" are not part of this manager's vocabulary. Challengers like to find new ways to do the work, but seldom accept the first solution or idea an employee or the team proposes. Instead, they encourage staff to brainstorm and identify multiple ways to tackle difficulties or resolve problems.

***Cons*:** Tends to play the eternal devil's advocate, always asking for another idea or solution. Employees may become frustrated by the Challenger's habit of debating the advantages and drawbacks of each idea. Challengers are often perceived as indecisive and argumentative.

***What this type can teach others*:** Because Challengers are not complacent or traditional, they're open to change and allow their employees to question established procedures. As a result, their teams have a great deal of autonomy and are empowered to innovate and improve.

The Benign Dictator

Pros: Eager to provide instructions or give on-the-spot feedback. Likes to drop by workers' cubicles for updates. Holds frequent meetings to discuss the status of projects and give detailed input.

***Cons*:** Has strong opinions about the best way to perform any given task and tends to give unsolicited advice or make comments about employees' work habits. Prizes obedience; generally not open to questions, challenges or feedback.

***What this type can teach others*:** Paternalistic managers may be a dying breed, but they're not without good qualities – namely, the ability to give clear, detailed instructions and ongoing feedback, so their employees always know what's expected of them and what the performance benchmarks are. Employees who feel lost without a heavy degree of guidance get along great with the benign dictator-boss. More independent workers do not, and consider this type a micromanager.

The Un-Manager

***Pros**:* Gives employees plenty of free rein to perform their jobs in whatever way they deem most efficient and effective. This type does not micromanage or obsess about details or processes. They trust their employees' judgment and professional experience.

Cons: In contrast to the Benign Dictator, Un-managers can be hands-off to the point of being completely disconnected from their team. They may fail to provide sufficient direction, leaving their employees to make educated guesses about what needs to be done or how to handle a particular project. Their lack of involvement can lead to inefficiency, delays, missed deadlines and breakdowns in communication.

***What this type can teach others*:** When not taken to an extreme, the laissez-faire approach permits very independent employees to flourish and hone their management skills. Capable employees naturally move into leadership roles, while the team becomes a unified whole with a sense of shared purpose.

The Cheerleader

***Pros*:** Motivates workers through frequent praise and positive feedback. Begins weekly staff meetings with a pep talk and a game plan. When problems arise or mistakes occur, the Cheerleader does not blame individuals but instead chalks it up to a lack of coordinated teamwork.

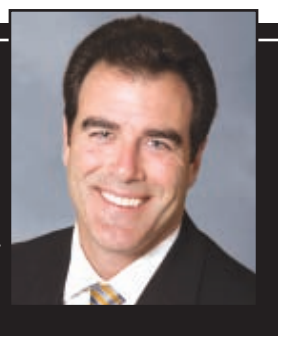
***Cons*:** The Cheerleader's concerns about group morale can lead to reluctance to give critical feedback on a real-time basis, even when it's warranted. This could result in unwelcome surprises for some individuals at performance review time.

***What this type can teach others*:** Cheerleaders know that praise and recognition are among a manager's most powerful motivational tools and an effective way to reinforce desirable work habits. Managers who tend to be too critical can take a page from the Cheerleader's playbook.

There is no single managerial style that works best in all circumstances or with all types of employees. As a result, no one type of manager is superior to the rest. A smart strategy is to take the best from all types and develop your own original style. You can make adjustments and try different approaches until you find what works best with your staff.

For more advice on management and career issues, listen to Robert Half's podcast series, The Management Minute, at www.rhi.com/podcast.

BRETT GOOD



Brett Good is the District President for Robert Half, the world's first and largest specialized staffing firm. The company has more than 360 offices worldwide, including Orange County locations in Irvine, Laguna Niguel, Huntington Beach and Orange. For more information, visit us online at www.roberthalf.com.

Recent California Employment-Related Legislative Developments

by Michael A. Hood, Partner, Paul Hastings

In 2008, Governor Schwarzenegger once again spared employers the "bad news" from the California legislature that was commonplace for years. After the Governor vetoed several troublesome bills for employers passed by the legislature, the 2008 legislative session turned out to be relatively mild in terms of employment-related aware of legislation. However, employers need to be aware of four bills that made it into law.

I. Assembly Bill 2075 (Time Worked Certifications and Releases of Wage Claims)

Many California employers require their employees to certify the accuracy of their reporting of hours of work. AB 2075, which takes effect on January 1, 2009, treats an employee certification of time entries that an employer "knows to be false" as an invalid release under Labor Code section 206.5. This change raises some troubling issues for employers.

A. *Background*

Many California employers rely on time card certifications to provide a defense to claims of underpayment of wages, including claims of "off the clock" work, one of the new class action favorites among the plaintiff's lawyers. Those certifications, which are included on handwritten time cards or incorporated into computer based time keeping systems, typically include two types of representations: (1) a certification that all time entries are accurate; and (2) a certification that employees have complied with employer meal and rest period policies and have taken required lunch breaks and permitted rest breaks. The precise forms of these certifications vary considerably.

As amended, Section 206.5 now contains a short additional clause: "'execution of a release' includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false." The proponents of the amendment identified the target of the legislation as unscrupulous employers intent upon protecting themselves from wage and hour litigation through the creation of knowingly false statements of time worked. However, the amendment does not define the word "knows" and does not address many related questions. Therefore, scrupulous employers should carefully review the implications of this legislation upon their time certification practices.

B. *Implications*

Are time card certifications now invalid under the Labor Code? No. Time card certifications of accurate entries remain valid and are an important line of defense against wage and hour claims based upon time worked.

What is the meaning of "knows"? Plaintiffs likely will argue that "knows" implicitly also means "knew or should have known." Employers likely will argue that "knows" requires direct proof of intent to pay for less than all time worked.

Difficult issues will arise in connection with employees who work away from employer premises or on employer premises but outside of hours when supervisors and managers normally are present. One step that employers should consider is the promulgation of a clearly articulated policy that requires employees to record all time worked, prohibits off-the-clock work and specifies a procedure for raising complaints about time keeping practices. This step, like the similar step referenced below under the discussion of time certifications, could provide at least a means to learn of compliance issues before they become lawsuits and, at best, may provide evidence in defense of liability.

How does the new legislation affect the role of managers in the approval of time cards? Some employers bypass manager approval of time cards to speed the processing of pay checks. The new legislation does not render this practice unlawful, but the invalidity of time cards that an employer "knows to be false" arguably increases the value of manager approval. Through managerial oversight, an employer can increase the chances that it will identify and correct entries that do not reflect the manager's observation or understanding of an employee's time worked during the relevant pay period.

How does the new legislation affect the content of time card certifications? The new legislation does not prohibit any particular form of certification or impliedly suggest the value of one form of certification over another. However, a few comments on the form of time card certifications are in order.

• ***Certifications of Accurate Time Entries.*** At a minimum, a certification should state: "I certify that this is a correct record of hours worked." Whether the certification should contain additional reciprocal representations – such as "and that I have worked no time not reflected on the time card" – and whether the certification should be made under penalty of perjury are maters as to which employers should seek legal counsel. Special work circumstances may require a certification that is unique to an employer.

• ***Certifications of Meal and Rest Period Compliance.*** Many employers add certifications of meal and rest period compliance to their time entry procedures to protect against meal and rest period litigation. If the current "provide/compel" debate resolves itself with the adoption of a "compel" standard, such certifications may be of little practical value, but they will have created no harm. However, if the current "provide/compel" debate resolves itself with the adoption of a "provide" standard, some employers may be unpleasantly surprised to find themselves in litigation disputing whether missing, late and short meal periods revealed in their time records are the result of employee choice or employer interference. In such litigation, certifications by employees that their time entries showing missing, late and short meals are the result of employee choice are potentially powerful evidence of lawful behavior by the employer.

The forms of such certifications are varied, and employers who wish to take this protective step should seek legal guidance. Without intending to specify any particular protocol, the certifications could indicate that employees are aware of employer meal and rest period policies and confirm that they have taken breaks in accordance with those policies. Employers seeking a more aggressive or detailed compliance standard could require a separate electronic or written meal and rest period certification for each day worked. Earlier difficulties programming such certifications on a daily basis are becoming less problematic, as timekeeping software becomes more sophisticated.

• ***Inclusions of References to Complaint Mechanisms.*** More and more employers are including within their certifications, handbooks, or other employment policies a reference to a 1-800 number or email address that an employee can contact if he or she believes that the employer is not adhering to its timekeeping, meal period or rest period practices. It is not clear what legal defense such certifications will provide, but there is reason to consider the adoption of a compliance mechanism seriously.

Federal law currently contains a defense to liability for alleged unlawful harassment if the employer has announced a clear anti-harassment policy, has established a complaint mechanism, immediately investigates harassment claims and takes effective corrective action where necessary. The 2004 regulations under the federal Fair Labor Standards Act ("FLSA") adopted an identical standard for claims of unlawful deductions from the salaries of exempt employees. In response, the federal Department of Labor ("DOL") created a defense to liability for employers who clearly announce a policy against unlawful salary deductions, provide a complaint mechanism within that notice, reimburse employees who are the subject of improper salary deductions and make good faith attempt to comply in the future.

It is too soon to determine whether courts will engraft this "notify, invite, investigate and correct" defense more broadly as wage and hour law evolves. However, employers who adopt such rules for their timekeeping (or other) wage and hour policies at a minimum create a means to learn of and address complaints internally, before they become lawsuits. And in lawsuits, the existence of such policies, and employees' failure to use them, may provide powerful evidence that can be used to attack the credibility of employees who claim they were forced to work off the clock or to miss meal and/or rest periods. Employers who are interested in adopting "notify, invite, investigate and correct" policies should consult legal counsel with respect to their formulation,

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Mr. Hood has chaired the Orange County office's employment law practice, and is also a member of the office's Trade Secrets and Unfair Competition Practice Group. He is also the firm's most experienced jury trial lawyer in employment cases and has prevailed on behalf of employers in such cases in more than 80% of his trials.

Mr. Hood is active in many community and civic associations, including the YMCA of Orange County and South Coast Repertory Theater, and is a member of the Employment Law Section of the State Bar of California, as well as a member of the ABA Committee on Practice and Procedure before the National Labor Relations Board.

Mr. Hood speaks and writes extensively on employment law topics and is a regular contributor to the Los Angeles Times on such issues. He is named as one of the best employment lawyers in the United States in the current edition of The Best Lawyers in America.

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Alliant Insurance Services: Delivering a Difference in Employee Benefits

Employers have a critical need for a cost-effective employee benefits strategy that not only protects the health and well-being of their employees but enables them to remain highly competitive in attracting and retaining qualified employees—the lifeblood of a successful company.

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Alliant

The result is that clients receive the right employee benefits solutions for their company's special needs and unique culture. They also receive highly responsive day-to-day service that ensures their insurance vendors deliver exactly what was promised in the sales process.

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2. RFP development, vendor procurement, negotiations
3. Implementation, vendor management, reporting

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• **Wellness.** Services are provided for planning and implementing wellness programs; education and training; vendor representation and the coordination of health assessments; health screenings; and health fairs.

• **Compliance.** Services include reviewing plan documents to ensure compliance with a wide range of federal and state laws and regulations.

• **Human resources consulting.** Services are provided for developing employee handbooks, conducting human resources audits, implementing compensation systems, developing loss control and safety programs, managing unemployment claims,

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Business Beware: New Disability Access 'Reform' Law Leaves Door Wide Open to Costly Litigation

by Shawn Larsen, Esq., Associate, and Brandon Sylvia, Esq., Associate, Rutan & Tucker

It is every California business owner's worst nightmare. Without any prior notice that a problem exists and without having received a single customer complaint, you are sued for disability discrimination. The lawsuit, drafted in vague language, claims that your business—be it a major retail chain, a favorite local eatery or a "mom and pop" auto repair garage—denies equal access to disabled customers. The complaint demands that you immediately remove all "barriers to access," which may range from relatively minor tasks, such as moving the garbage can in the public restroom, to major construction projects, such as reconfiguring your entire parking lot. On top of these costs, the lawsuit also demands that you pay $4,000 per "violation," which may add up to tens (or even hundreds) of thousands of dollars in damages. Often, the lawsuits are accompanied by a letter from the plaintiff's lawyer, offering a quick, but expensive, settlement. And here is the kicker: even if you remodel your entire facility to meet this particular plaintiff's demands, there is no guarantee that you will not get hit with another, nearly identical lawsuit in the future.

This scenario, which is playing itself out now in thousands of lawsuits across California, has left business owners in an untenable position. Most have every intention of complying with the law, but either do not know exactly what is required of them or cannot afford to make the requested changes. Unfortunately, in dire economic times such as these, the latter circumstance is occurring with increasing frequency.

The California business community has long fought to bring what it considers to be some modicum of fairness to state disability access laws. This year, the State Legislature finally responded with the passage of Senate Bill 1608. Many are calling this legislation "landmark." The question for business owners is whether SB 1608 actually lives up to that billing. Unfortunately, the likely answer is probably not.

What are the current legal obligations for a California business?

Under federal law (the Americans with Disabilities Act of 1964, or "ADA"), private businesses must provide goods and services to all individuals, regardless of disability, on an equally-accessible basis and in an integrated (as opposed to separate) setting. If and when there exist architectural or structural barriers to equal access, businesses must remove them when readily achievable. The federal regulations list individual requirements for specific aspects of a business, and cover everything from the acceptable width of a doorway to the height of a countertop to the permissible weight of a door. State accessibility laws (specifically, the California Buildings Code, or "CBC") are similar in scope, but generally are more strict than their federal counterparts. Adding to the haze, the federal and state regulations are not always consonant with one another. For example, the ADA provides for a minimum walkway width of 36 inches, while the CBC requires 48 inches. **Thus, a California business that complies with the ADA may still be vulnerable to access suits**.

Despite the difficulties that accompany interpretation and compliance with accessibility law, the risk inherent in foregoing compliance is likely to be much more costly. California law allows for a plaintiff to demand up to $4,000 in damages *for each violation* of the law, no matter how minor the violation, and regardless of whether the plaintiff was actually injured by the violation. Thus, a bathroom mirror hung too high, an impermissibly heavy door, an improperly-graded ramp, an improper striping of the parking lot, and a mis-colored sign that would *each* allow for a claim for $4,000. Moreover, California law allows for penalties to accrue for each day that the violations are not remedied, which can amount to thousands of dollars *a day*. There is also no limit to the number of lawsuits that can be brought based on a business' violation of access law. Thus, multiple plaintiffs can each sue individually for the same violation of the ADA or CBC.

Finally, there is no way for a business to preemptively protect itself from access suits. For example, the approval of a local building inspector is no shield to access suits, because the federal accessibility law is outside the purview of a "local" building inspector, and as discussed, the CBC and ADA are not always in agreement.

Business owners have asked that this legal framework be amended to include (1) a process by which they can "certify" their facilities as "compliant" with state and federal disability law, or (2) a "notice and cure" provision, which would require plaintiffs to notify business of potential legal violations, and give them a set period of time to fix the problem, before filing suit.

What will SB 1608 change?

Unfortunately, SB 1608 does not adopt either of the above approaches. Rather, SB 1608 enacts a series of new measures aimed toward stemming the tide of oppressive access litigation. The most prominent feature of the new legislation – at least from the business perspective – involves the optional use of a "certified access specialist," or CASp.

SB 1608 requires local building agencies to employ CASp personnel who will be available to consult on new construction projects to ensure compliance with state and federal disability law. The purpose is to avoid the all-too-common circumstance in which a project has passed the necessary inspections and received the necessary permits, only to find itself hit with a lawsuit based on undiscovered violations.

Business owners may retain a CASp to inspect the premises, at the business owner's sole expense, of course. The CASp will either certify the location as compliant, or will identify access obstacles and assist the business in remedying the barriers to comply with the law. After the CASp inspection and completion of any repairs that may be deemed necessary, the business will be provided with a sign to display showing that it has undergone a certified inspection.

Regrettably, certification of a business, whether it is a new construction project or an existing facility, does not act as a "get out of lawsuit free" card. However, businesses that take the proactive step of hiring a CASp are entitled to a number of benefits under SB 1608. Primarily, a CASp compliant business that is subsequently sued for disability discrimination will be considered a "qualified defendant." As such, the business may take measures to slow down, and perhaps end, the lawsuit.

SB 1608 allows a "qualified defendant" to demand a 90-day "stay," or temporary stoppage, of the litigation process. During the stay, a "qualified defendant" is entitled to compel all parties' participation in an early evaluation conference directed by the court at which the parties can explore settlement options. At this conference, the plaintiff must provide the defendant/business with the amount of damages claimed the amount of attorney's fees and costs incurred to date, and any demand for settlement at the early evaluation conference. Any written demand for money (by a plaintiff's attorney) also must be accompanied by an explanation of the business' legal rights, including the right to consult with an attorney, and the fact that the business' insurance may cover some costs of the lawsuit. Attorneys who fail to provide this information are subject to State Bar discipline.

The new law also imposes requirements on local building agencies, as well as their employees. SB 1608 mandates that eight hours of disabled-access specific continuing education be included in the 45 hours of continuing education that are already required of local California building department personnel every three-years. This continuing education will cover compliance with federal and state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. By July 1, 2010, each local building department will be required to employ at least one CASp, and by January 1, 2014, each local agency must employ "a sufficient number" of CASps.

What can businesses do now to protect themselves?

Perhaps the most valuable function of SB 1608 is the deterrent effect that may result from a business' publicized and proactive attempts to comply with the access laws. Thus, business owners should strongly consider retaining a CASp to inspect the business premises. The CASp report obtained from the inspection is required to invoke the 90-day stay provision of the law; as such, this report should be maintained by the business in a safe place. Also, the business should prominently display the CASp window sign to demonstrate that steps have been taken to comply with disability access law.

Commentary

While SB 1608 is a step in a positive direction, most business owners likely will feel it does not go far enough to give them peace of mind in this highly litigious climate. For many, its provisions will appear trivial when juxtaposed with what could have been – but was not – done to curb extortionist access suits. SB 1608 does not create a "safe-harbor" for business owners who undergo a CASp inspection, nor does it allow for a "right to cure" period so that a business can avoid litigation all together. Additionally, nothing in the new law requires pre-lawsuit notice to a business of an alleged access violation.

Instead, SB 1608 only delays what has become mostly inevitable, by allowing a business a 90-day reprieve from litigation. Although a qualified defendant can force an early evaluation conference to *discuss* settlement, there is little in the bill to encourage a plaintiff's attorney to actually settle the case. Additionally, there is little in either existing law or SB 1608 to encourage a plaintiff to compromise his or her settlement demands. While the new law clarifies that a court may consider any settlement offers when determining an appropriate amount of attorneys' fees to award, this has always been the case.

Considered in this light, SB 1608 falls short of crafting any real protections for busi-

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Identity Theft is a Workplace Issue Too

With holiday sales projected to beat last year's numbers, many consumers will be victims of identity theft this year and will have to deal with the headache of restoring what was lost.

We all know that identity theft is a $50 billion a year business. We've all heard the stories of how innocent people have had their credit and financial standing ruined by criminals who steal wallets and mail in order to perpetuate credit card fraud. Many innocent people have been impacted, and these stories are all over the news.

But what most people don't realize is that identity-fraud is rampant in the world of employment too. Due to the nature of their business, staffing companies deal with this issue every day of the year — not just during the holidays. Especially in staffing agencies that handle high-volume, where 48% of all light industrial applicants attempt to gain employment under a false identity.

Paying attention to details pays off

At Alar Staffing, we see approximately 200 applicants every day. Here are a few interesting stories that happened just last month:

Recently, a man we'll call "Jeff McKinley" came to Alar to apply for a position and after the job offer was made, he presented his ID. The hiring recruiter spotted that Jeff's ID was fake, and as Jeff was unable to provide valid ID, the job offer was rescinded.

One week later, a different man came to apply. He was also named "Jeff McKinley." Amazingly, the same hiring recruiter who interviewed the first man, also interviewed this man and remembering the encounter with "Jeff" the previous week. She compared the personal information he provided on his application to that of the first "Jeff McKinley." All the personal information matched. Fearing that the man in front of her might be a victim of identity theft, our recruiter explained that another man claiming to be "Jeff McKinley" had applied the week before, and she asked if he thought his identity might have been stolen, and if he would like to report this to the police. After some consideration, the man grinned, and told us his story:

It turns out that the second man was, in fact, the real Jeff McKinley. He and the first man (let's call him "Dave") had devised a scheme where they would both benefit from Dave using Jeff's identity. Dave had recently been released from prison for assault, and he was having a difficult time finding a job because of his criminal background. Jeff had a construction job, where he was paid in cash Jeff did not have a criminal record, and agreed to let Dave use his identity to get a job. Dave got a fake ID with Jeff's name, and was going to pay Jeff $25 every week for the use of his identity. Besides the $25 extra cash per week, Jeff would also benefit from Dave's wages being used to accrue social security, medicare, and unemployment benefits for Jeff's future use.

Because the Alar recruiter recognized that Dave's ID was a fake, Jeff made a second attempt to perpetuate the scheme by applying for the job himself. Their plan was to have Dave report to the job site to do the actual work.

Obviously, Jeff's application was denied, and neither Jeff nor Dave were given a job.

Another time, an Alar applicant was turned away because he presented a fake ID. A few days later the applicant returned with valid ID. When we questioned why he had applied twice with different names, he confessed that he was currently receiving unemployment benefits from his last employer, and wanted to continue doing so while working full time elsewhere... scamming the system for two incomes! Again, this applicant was not hired, and another scheme was foiled.

The "Audacious Applicant Award" goes to a lady that presented a fake resident card that listed her home country as "Kamboria."

But the "Audacious Applicant Award" goes to a lady that presented a fake resident card that listed her home country as "Kamboria." Apparently, her counterfeiter did not know how to spell "Cambodia." And, to boot, the country code below that said "MEX."

The benefits of hiring intelligently

These are only a few examples of the types of situations that we encounter on a regular basis. Had any of these applicants been successful in their attempts to gain work using fake IDs, our clients inevitably would have had to deal with the consequences. 27% of applicants who apply with a false identity are hiding a criminal background, 8% are professional claimants or malingerers with a history of bogus lawsuits and fraudulent claims against previous employers.

By doing our due diligence and paying close attention, we are able to weed out predatory applicants and mitigate the risk of workplace dysfunction, thus maintaining productive and positive work sites.

The Dept. of Homeland Security holds employers responsible for hiring workers that are not authorized to work in the United States. But, even if your company isn't caught with illegal workers, it can still be a costly mistake. Studies show that a 1.5% increase in unemployment leads to a 21% increase in lawsuits against employers. Because if an illegal worker gets laid off or is fired, he or she cannot collect unemployment benefits. However, it is not unusual for a worker who beat the system by working under a false identity to attempt to collect more money by suing an old employer or filing a false claim.

Rather than fight the lawsuit, the majority of companies choose to settle out of court to avoid costly court fees and a tarnished reputation. Human Resources managers can go a long way in protecting their companies from the numerous hassles that illegal workers create by ensuring that employees have passed a thorough background check and—most importantly—that they really are who they say they are! After all, what would be the point of doing a background check on the wrong person?

To mitigate losses and pass the savings on to their customers, Alar has created a training system to screen out employment predators. To learn more about the benefits of Identity-Fraud screening or training, please contact Pati Cinkle at (714) 667-3102.

The Employee Engagement Survey- The Power of Knowing

by Kathi Guiney SPHR, President and Sr. Human Resource Consultant, ***YES!*** *Your Human Resources Solution*

With the current recession and dreary employment outlook we don't hear much about employee turnover. In fact, you may have voluntary turnover that is approaching 0%. Is it really because your employees are so satisfied? Job cuts, more work and less pay are not usually the path to happy employees. In fact, a recent Executive Quiz conducted by Korn Ferry found 47% of those surveyed were either somewhat or very dissatisfied with their current position.

If almost half of these executives are unhappy –just imagine what is going on further on down in these organizations. Recent Watson Wyatt information indicates that as many as 2/3 of the general work force is either doing just enough to get by or even worse, just waiting until they can leave. It does not take much of a stretch to suggest that some employees in this group are considered by your management team to be among your "best" employees and the same ones being counted on to ensure the company's successful future.

Preventing loss of talent in the future

The reality is – when the job market is bleak employees are hesitant to take the risk of changing employers. But that should not lull you into a false sense of confidence. If your best employees are just waiting for the job market to turn, you should ask yourself… ***What can I do now to prevent the future loss of the company talent?***

Knowing what satisfies, motivates and engages your workforce is just as important in a down economy as an up economy. Fortunately, there are easy to use on-line survey tools such as Surveymonkey.com and Zoomerang.com. A well-crafted survey lets you find out quickly and anonymously what is on the minds of your employees and what you need to do to avoid a "brain drain" when the economy turns.

What makes a good survey question? Ask your employees what one thing they would change, ask them what is the best thing about working for your company, and ask them if they would refer a friend to work at the company. Use as many multiple choice questions as possible and make it fun.

Once the survey data is collected, be ready for some surprises. You may find that you (or management) and employees do not see eye to eye on the work environment and what motivates them to stay engaged and productive. It is imperative to follow up with employees after a survey. Conducting surveys without a follow up action plan will increase employee dissatisfaction and quite likely lead to the "why did I bother" response from employees. (Candidly, haven't we all experienced this at least once in our work life? Not good!)

Action plans based on survey results do not need to be costly. For example, if the feedback is that employees do not feel informed on the company's business status, a solution may be more frequent communication on business goals and establishing clear line of sight of how employees can contribute to the company's success.

By including employee surveys as a tool in your strategic planning you will position your company to emerge stronger and more focused when the economy turns around. Your best employees will be more apt to stay and you are likely to attract the attention of talented new hires who will view your company as being in touch with employees - an employer of choice.

YES! *Your Human Resources Solution: Kathi Guiney SPHR, President and Sara Snoy, SPHR, CCP, GRP Senior Compensation and Training Consultant deliver* ***the expert level HR you need- when you need it****. For more information on this article and how* ***YES!*** *services will have a return on investment for your company, call Kathi Guiney at 949-842-2848 or e-mail at Kathi@yeshrsolution.com*

ALLIANT

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developing affirmative action plans, and providing management/supervisory training.

• **Benefits management.** Management and administration services are provided for cafeteria plans, flexible spending accounts (FSAs), premium-only plans, healthcare spending accounts, transportation benefits, COBRA, HIPAA, and consolidated billing.

• **Executive benefits.** An array of executive benefits plans designed to incentivize and retain key employees and link their performance to the employer's strategic goals and objectives includes non-qualified plans, key person coverage, deferred compensation plans, and short- and long-term incentive plans.

• **International consulting.** Utilizing a network of 207 partners in 102 countries, international services are provided for underwriting and risk assessment, developing country information and benefits schemes, and implementing local program rollout and servicing.

Additional Services

To complement its core benefits products and services, Alliant Insurance offers employers a wide range of other benefits and business-related services. These are available through providers who have been screened and pre-qualified by Alliant Insurance, eliminating the need for clients to spend valuable staff time going through the same process.

Services available to corporate and public entity clients include:

- 401(k) and pension planning
- Profit-sharing plans
- Benefits call center
- Payroll services
- Total compensation statements
- Voluntary benefits plans
- Retirement programs and communications
- Investment options review
- Business planning
- Buy-sell agreement analysis

About Alliant Insurance Services

Headquartered in Newport Beach, Calif., and with a history dating back to 1925, Alliant Insurance Services provides property and casualty, workers' compensation, employee benefits, surety, and financial products and services to more than 15,000 specialized clients nationwide, including public entities, tribal nations, healthcare, energy, law firms, real estate, construction, and other industry groups. More information is available on the company's website at www.alliantinsurance .com.

Good health is family

Labor delivery room

Kaiser Permanente Orange County—A Leader in Women's Health Services

Providing exceptional healthcare for women requires a special touch—caring and compassion combined with medical expertise and a personal approach. At Kaiser Permanente Orange County Women's Health Services we do just that. You will find dedicated, considerate professionals who provide the most modern and personalized health services available to women throughout every stage of life. Most importantly, we value autonomy and choice, and deliver outstanding care that is customized to our members' individual needs.

Utilizing a modern, integrated, multidisciplinary approach combined with the most up-to-date technology, our tremendous team of board certified OB/GYN physicians and sub-specialists, certified nurse midwives and nurse practitioners provide health assessments and consultations, comprehensive treatment, and a broad range of wonderful programs and services for women of all ages. These include:

- General health care and health promotion services
- Pregnancy and maternity care
- Maternal Fetal Medicine for high risk pregnancies
- Reproductive infertility services
- Genetic counseling
- Full spectrum gynecologic services
- Minimally invasive surgical alternatives
- Urogynecology services (pelvic health)
- Gynecology oncology services
- Educational classes for pregnancy, childbirth, newborn care and a wide spectrum of other medical and health-related topics

One stop for a healthy you

Kaiser Permanente Orange County Women's Health Services are conveniently located throughout the county in eight medical offices, providing easy access from home and work. You will also find lab, radiology (including mammography), and pharmacy, in addition to other specialty and primary care services, at these same locations and others, allowing us to meet all your health care needs in one stop. Additionally, Kaiser Permanente is a leader in web-based services that support quick access to our services and information. Through My Health Manager on kp.org, you are able to contact your personal physician by e-mail; make or cancel appointments, refill prescriptions, view lab test results, and more.

Your good health is everything

Our goal is to keep you healthy and thriving. One of the best ways to do this is by creating a partnership with you, allowing us to work together to meet all your health needs. This core belief—keeping you as healthy as possible—means that we focus heavily on preventive measures such as mammograms and pap smears (including HPV testing). And, we work hard to ensure that you receive those health screenings that are appropriate and timely for you—for example, making sure your diabetes or high blood pressure is in control, all by using our state-of-the-art electronic medical record system.

Of significance, Kaiser Permanente Southern California leads the nation in mammography screenings. In the 2008 Quality Compass® report from the National Committee for Quality Assurance (NCQA), Kaiser Permanente Southern California had the highest breast cancer screening rate in the nation, with more than 87 out of 100 members receiving their recommended mammograms. We believe that focusing on prevention and early detection is critical to improving women's health and saving lives.

Good health is family

Every pregnancy is unique. As you begin your journey to parenthood, you can choose a physician, certified nurse midwife, or nurse practitioner who will meet your specific needs and provide you with the highest quality care. Moreover, our team offers great flexibility and diversity to meet your individual preferences. Kaiser Permanente Orange County offers you a unique childbirth experience, with 24 hour-a-day/7 days-a-week, in-house hospital coverage by obstetricians, midwives and anesthesiologists to ensure your comfort and safety. Pregnancy is an exciting time that will bring about a new life, and our goal is to help you and your baby thrive every step of the way.

Some of the services offered during normal pregnancy include prenatal exams, screening and diagnostic testing, care for pregnancy-related problems, preparation for childbirth, postpartum care, and education during visits and through our outstanding prenatal education program. Our certified lactation consultants provide prenatal breastfeeding education and support because mothers who breastfeed have healthier babies.

Maternal Fetal Medicine specialists are available for women with high-risk conditions and pregnancies. Our multi-disciplinary team is comprised of maternal fetal medicine physicians, genetic counselors, and certified nurse midwives who work together in conjunction with your OB/GYN provider to manage the wide spectrum of conditions that predate or can arise in pregnancy.

Kaiser Permanente Orange County Women's Health Services also offers other amenities through our childbirth program such as private rooms, private breastfeeding consultations, and celebratory meal for mom and dad and baby gift bag. Many childbirth classes are available including "Daddy Boot Camp," where dads-to-be learn the ropes of fatherhood from the real experts—brand new dads. Our Healthy Living Store features breast pumps at affordable prices along with a host of other items for pregnancy.

And don't forget, you can take a tour of your baby's birth place without leaving the comfort of your home! Go to the Orange County Women's Health Services website at www.kpwomen shealth.org and take the virtual tour of our Orange County medical centers where you'll get a peek at our modern delivery rooms and family friendly areas.

Orange County Women's Health Services also offers reproductive infertility assistance to help couples in conceiving. We provide a variety of services in a caring and empathetic environment including evaluation of infertility, recurrent pregnancy loss, ovulation induction, intra-uterine insemination, donor sperm, and a wide variety of reproductive surgeries.

Good health is awareness

Our diverse group of physicians offers a wide range of gynecologic services devoted to managing all aspects of women's health care in a caring and complete fashion. We believe in partnering with women throughout the different stages of their lives not only for treatment, but even more importantly for prevention.

- **Minimally invasive surgical alternatives.** Kaiser Permanente is leading the way in offering several minimally invasive surgical options for permanent sterilization and for hysterectomies. These methods can be done in an outpatient or physician's office setting, and also offer a shorter recovery time. They are less painful and often reduce the length of off-work time.
- **Female pelvic medicine and reconstructive surgery.** We also offer female pelvic medicine and reconstructive surgery which provides care for women with disorders of the pelvic floor area. This includes pelvic organ prolapse, urinary incontinence, bladder disorders and anal incontinence.

Our personalized approach involves individual assessment and evaluation and includes different forms of treatment from conservative (non-surgical) care to surgical procedures. Our team is made up of physicians, nurses and pelvic floor therapists who collaborate to provide excellent care for women with pelvic floor disorders.

- **Gynecologic oncology.** The specialty of Gynecologic Oncology is unique in its approach to the care of women. Our specialists are focused on the surgical evaluation, chemotherapy and supportive care for women with gynecologic cancers. We believe in a team approach when providing comprehensive cancer care, which includes the unique combination of the physician performing surgery as well as managing all aspects of a patient's care including chemotherapy. And our nurse case managers help you every step of the way by coordinating your treatment, care and follow-up.

Good health across the county

In addition to the many medical offices providing women's health services, we now have two medical centers to serve you—one in Irvine and one in Anaheim.

Kaiser Permanente Orange County - Irvine Medical Center was built with a flexible design that allows for changing care practices and technologies, such as our electronic medical record system and advanced imaging systems that improve diagnostic and treatment capabilities. All patient rooms are private with an acoustic design that reduces noise. A family-friendly environment offers pullout beds for overnight stays and wireless Internet access. Labor and Delivery suites resemble home, with curtains, natural light and wood-like floors yet contain all of the equipment needed to assist with labor, non-surgical childbirth and recovery. Our neonatal intensive care unit is readily available to manage and care for our youngest members who require an additional level of care.

Operating rooms contain state-of-the-art equipment. High resolution monitors allow surgeons access to digital images while performing surgeries. The facility boasts a distinctive emergency department with 3 separate care areas containing 12 bays each, for a total of 36 beds. A healing garden and open spaces create a peaceful environment, while warm colors and natural light in every patient room enhance comfort and healing.

The new Kaiser Permanente Orange County – Anaheim Medical Center Campus is currently under construction. When complete, it will house two medical office buildings, a parking structure, and a brand new, 262-bed hospital that will replace the existing 200-bed hospital on Lakeview Avenue. The first building at this location, Kraemer Medical Office 1, opened in September of this year. The second medical office is expected to open in 2012 and the hospital in 2013. This new campus allows Kaiser Permanente Orange County to better serve members with expanded, state-of-the-art services in many areas, including medical and surgical care, emergency care and intensive care.

For more information about Kaiser Permanente Orange County Women's Health Services, please visit www.kpwomenshealth.org.

California's Disability Access Reform:

How Businesses Can Take Advantage of the New Law to Protect Against Abusive Litigation

by Emily Camastra, Associate, Fisher & Phillips LLP

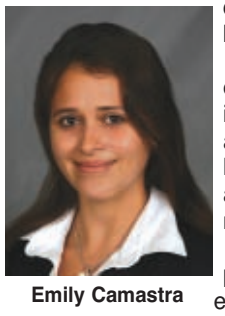
Are you sure your business establishment is fully accessible to disabled individuals? California businesses, especially small businesses, are increasingly realizing the high costs associated with even the most minor violations. California's Unruh Civil Rights Act enables a disabled individual to recover $4,000 each time they are denied full access to an establishment, The same law also allows a disabled individual to recover an additional $4,000 each time they forego entering an establishment as a consequence of having knowledge of the violation. For example, let's imagine a restaurant that fails to install insulation on its bathroom pipes, which is an accessibility violation. If a disabled individual claims that he or she visited the establishment on two occasions, and then was deterred from visiting the establishment on two other occasions, he or she would be entitled to $16,000 in monetary damages in addition to his or her lawyer's attorneys' fees and costs. Previously, businesses could argue that because they harbored no intent to discriminate, such damages should only be limited to $1,000. However, in *Munson v. Del Taco* the California Supreme Court recently ruled that intent is no longer relevant to disability access claims, and that a plaintiff will be entitled to $4,000 for every violation under the Unruh Act.

Disability activists insist that the monetary damages are essential to ensure compliance, but businesses argue that the damages lead to abusive litigation, causing plaintiffs to scour businesses for technical violations. Every month, hundreds of cases are brought by a handful of plaintiffs, alleging denials of access to business located throughout the state of California. Last year, a bill was introduced in the California legislature that *would* have required plaintiffs to provide businesses with pre-lawsuit notification of any violation, and would have provided monetary damages only after the same business failed to correct the violation. Although this proposed bill was rejected, the legislature did pass a bill that could significantly curb abusive litigation, provided that businesses take the necessary precautions.

Requesting a stay of litigation

Now, for disability access litigation filed after January 1, 2009, businesses can request a stay of litigation for 90 days in order for the court to hold an early evaluation conference to determine whether the plaintiff's suit has merit. During this early conference, the court is charged with evaluating the site's current condition and progress toward correcting any alleged violations. Because attorney's fees and costs can often dwarf the statutory damages, the early evaluation conference aims to prevent litigation costs from skyrocketing needlessly when cases can be resolved easily from the start.

However, businesses can only request a stay of litigation if they previously hired a state-approved Certified Access Specialist (CASp) to inspect the site for violations. Thus, businesses that are unsure whether or not they are fully in compliance would be wise to hire a CASp to perform an inspection. If the inspection produces no violations, the CASp will issue a certificate of compliance that the business can use as a shield during the early evaluation conference.



Emily Camastra

If after the inspection the CASp determines that corrections are needed, then he or she will provide the business with a signed and dated inspection report identifying the areas that need correction and a reasonable timeline for completing such corrections. If the business is hit with a lawsuit while they are in the process of correcting the facilities pursuant to a CASp report, the court will take the correction actions into account as a mitigating factor during the early evaluation conference.

In essence, the new law provides advantages for business that are proactive in complying with accessibility requirements. Businesses interested in hiring a CASp approved by the state of California should visit https://www.apps.dgs.ca.gov/casp/casp_certified_list.aspx.

Fisher & Phillips LLP has extensive experience representing businesses and property owners in Unruh Act and Title III litigation. For more information on this practice area or any other practice area related to defending employers in labor and employment-related matters, visit the firm's website at www.laborlawyers.com.

BUSINESS BEWARE

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nesses. Although the law commendably attempts to refocus the legislative scheme on improving access for disabled individuals, this is accomplished predominantly through the education requirements imposed on architects and building inspectors. While SB 1608 should help to limit non-ADA-compliant plan approval and construction in the future, there is little to insulate occupants and owners of currently-existing buildings from suit. Indeed, the new law is somewhat disheartening, as it confirms that a business that hires a CASp to conduct an inspection of the premises and receives certification that the premises are ADA-compliant **can still be sued**.

Perhaps the legislature preferred not to delve into the morass of distinguishing a bona fide access suit from one brought predominantly in the commercial interest of the plaintiff's attorney. Alternatively, maybe the Legislature feels that even the most oppressive access suit is, in an indirect way, a means to educate the public about ADA compliance. Or perhaps the quelling of access suits simply takes a back seat to the overall goal of promoting increased access for the disabled. Regardless of the Legislature's reasoning, the fact remains that businesses are as susceptible now as ever to predatory access lawsuits.

For more information on this issue, please contact Shawn M. Larsen at slarsen@rutan.com or Brandon Sylvia at bsylvia@rutan.com.

Career Success in a Difficult Economy

According to the latest information from the Bureau of Labor Statistics, California's unemployment rate is now 12.5% — the highest since World War II and presently the fourth-highest rate in the country. Job losses are prevalent in the manufacturing, leisure and hospitality, and construction sectors, as well as real estate and lending.

Adult education opportunities

Because of these economic challenges, more adults are returning to school to complete a degree or embark on graduate study to expand their career options. These adult students turn to schools like the University of La Verne that meet their needs through night and weekend classes and accelerated, 10-week semesters. "La Verne has spent the past 30 years cultivating adult education opportunities, and has helped thousands of Southern Californians invest in themselves through education," explained Steve Morgan, University President. "We have typical undergraduates at our main campus. But more of our students are over 25 years old and already in the work world. La Verne has been rethinking education for decades and anticipated this shift."

The University of La Verne's new $14 million Campus Center was dedicated September 2009

La Verne values adult learners and draws on their professional experience in the classroom. Accelerated programs offer unique classroom dynamics conducive to discussion rather than lecture and applied education versus theory. Programs like those at La Verne offer a solution to the time and money concerns adult learners face, including help with access to Federal financial aid.

La Verne offers both bachelor's and graduate degrees at its main and regional campuses and through La Verne Online — its virtual campus. "Considering the long term earning potential that advanced education can bring, we believe everyone should reflect on the high return on investment of a La Verne degree," concluded Morgan.

The University of La Verne, accredited by WASC, is a private, non-profit, university established in 1891. The Orange County regional campus is conveniently located in Irvine off the 5 freeway at Jamboree. For more information on earning your degree, visit www.laverne.edu or call 877-GO-TO-ULV.

CALIFORNIA EMPLOYMENT-RELATED LEGISLATION

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that can be used to attack the credibility of employees who claim they were forced to work off the clock or to miss meal and/or rest periods. Employers who are interested in adopting "notify, invite, investigate and correct" policies should consult legal counsel with respect to their formulation, implementation and enforcement.

• ***Adoption of comprehensive wage and hour policies.*** How does the new legislation affect employer adoption of comprehensive wage and hour policies? There is no requirement that employers adopt such policies. However, as employers increasingly adopt individual meal period policies, rest period policies, travel time policies, on-call time policies, overtime policies, time certification policies, and prohibitions against off-the-clock work (to name a few issues only), a question naturally arises whether the adoption of a comprehensive policy statement in a single document or intranet site (and the provision of related training) would provide useful protection against wage and hour claims. Employers who are interested in developing such comprehensive policies should seek legal guidance.

• ***Penalties for violation.*** What are the penalties for violating amended Section 206.5? Section 206.5 does not currently specify penalties for its violation, and the amendment is silent on the issue of penalties. However, Labor Code Section 2699.5 identifies Section 206.5 as a provision subject to the California Private Attorney General Act ("PAGA"). Thus, assuming plaintiff compliance with PAGA exhaustion requirements and proof of employer culpability, violations of Section 206.5 are subject to a one-year statute of limitations and penalties of $100 or $200 per employee per payroll period. For employers of any size, these penalties can mount up quickly.

II. Assembly Bill 10 (Computer Software Professional Exemption)

To qualify for the general professional exemption under both federal and state law, an employee must be paid on a salary basis. However, under Labor Code Section 515.5 as it existed prior to 2006, to qualify for the computer software professional exemption, an employee had to be paid for all hours worked at a rate equivalent to no less than a specified hourly sum. Since employers were well-familiar with the salary-basis requirement to qualify for most exemptions, some employers misunderstood Section 515.5 to mean that an employee who performed the required duties would qualify for the computer software professional exemption as long as he or she received a salary that was equal to the specified hourly rate based on a 40-hour workweek.

Effective January 1, 2006, the legislature amended Section 515.5 to allow an employer to pay computer software professionals on a salary basis, as long as that figure represented the "annualized full-time salary equivalent" of the specified hourly rate and as long as in each workweek the employee received no less than the specified hourly rate for each hour worked. Unfortunately, this change in the law did not eliminate the confusion over the compensation requirements for the exemption. For example, was an employer to keep track of all hours worked by its computer software professionals, just like it did for its non-exempt employees? Moreover, if an employer paid a salary above the specified minimum rate, could the employer use the excess as a credit against time worked over 40 hours in any workweek?

The Governor signed AB 10 on September 30, 2008, and it took effect immediately as urgency legislation. It appears to have finally answered the questions that have lingered since the original passage of the statute. As a result of AB 10, an employer can pay a computer software professional on either an hourly basis or a salary basis. For an hourly paid computer professional, the rate must be no less than $36 per hour for every hour worked. If paid on a salary basis, the employee must be paid an annual salary of no less than $75,000 per year for full-time employment, and the salary must be paid at least once a month in a monthly amount of no less than $6,250. Gone is any obligation that may arguably have existed under pre-amended Section 515.5 to keep track of time worked by those who qualify for the exemption if the employer avails itself of the salary-paid option.

Significantly, Section 515.5 continues to provide that the specified hourly and salary rates are to be adjusted by the California Division of Labor Statistics and Research ("DLSR") annually on October 1, to be effective on January 1 of the following year, by an amount equal to the percentage increase in the California Consumer Price Index ("CCPI") for urban wage earners and clerical workers. In fact, a reason that the law was designated as an urgency measure to take effect immediately was so that any increase in the 2008 CCPI would be applied to increase the required hourly and salary rates for 2009. On October 17, 2008, the DLSR issued a memorandum calculating the 2008 CCPI to be 5.4%, and applying this to the hourly and salary rates specified in AB 10. As a result, effective January 1, 2009, to satisfy the compensation prong of the computer software professional exemption, an employee must be paid $37.94 per hour or an annual salary of $79,050 (in a monthly amount of not less than $6,587.50).

III. Senate Bill 940 (Payment of Wages upon End of Temporary Assignment)

Labor Code Section 201 provides that when an employer discharges an employee, the wages earned and paid at the time of discharge, including accrued, unused vacation pay, are due and payable immediately. An employer who fails to comply with the law incurs a penalty of one day's pay for each day the final paycheck is delayed, up to and including six weeks' pay, a patricianly hefty penalty. Normally, *when* a discharge happens is obvious. Where it is not so clear is in the context of temporary employees. If a customer of a temporary agency no longer needs the temporary employee and ends the assignment, but the temporary employee is immediately placed or remains available for placement on another assignment by the temporary agency, has the temporary employee been discharged?

The California Supreme Court decision in *Smith v. Superior Court (L'Oreal)* raised more questions than it answered. In that case, the Court held that an employer violated Section 201 by failing to pay an employee who was hired for a one-day job as a hair model at the end of the day. However, the *L'Oreal* court was not faced with the question of whether the end of an assignment for a temporary employee who is immediately placed on or remains available for other assignments constitutes a "discharge" for purposes of Section 201. As a result there has been a rash of lawsuits against suppliers and users of temporary employees based on the failure to pay final wages upon the end of the temporary assignment.

SB 940, which was signed into law by Governor Schwarzenegger on July 22, 2008, and took effect immediately as urgency legislation, addresses this issue and should curb the lawsuits. SB 940 adds Section 201.3 to the Labor Code. Under new Section 201.3, the general rule is that temporary employees on assignment must be paid at least once a week, regardless of when the temporary assignment ends, and the wages for work performed during any calendar week must be paid no later than the regular company payday the following calendar week. If the temporary services employer meets these requirements, it is deemed to have timely paid wages upon completion of an assignment.

The law contains several exceptions to the general rule, as follows:

• Temporary employees assigned on a day-to-day basis (e.g., day laborers) must be paid their wages at the end of each workday regardless of when their assignment will end as long as the employees report to or assemble at the offices of the temporary agency, the employees are dispatched to the client's worksite each day and return to the temporary agency office or another designated location on the completion of the day's work, and the employees do not perform executive, administrative, professional or clerical work.

• Employees assigned by a temporary agency to a client that is engaged in a labor dispute must be paid their wages at the end of each day, regardless of the length of the assignment.

• If a temporary employee is "discharged" (presumably meaning that the employment relationship between the temporary employee and the agency has ended and he or she is not eligible for further assignments), final wages are immediately due and payable as provided in Section 201.

• If a temporary employee quits his or her job with the temporary agency, the employee's wages are due and payable as provided in Labor Code Section 202 (generally within 72 hours after notice of the resignation).

• Temporary employees on long-term assignments (i.e., assignments to a client for more than 90 consecutive calendar days) must be paid final wages on the last day of the assignment, unless the employee has been paid weekly in accordance with the general rule.

IV. Other Developments

Unlike what was true for many years, the coming year promises to be more "exciting" (read: troubling) for employers on the federal level than in California. Already within the last few months, Congress has passed and the President has signed significant legislation:

• The Americans with Disabilities Act was just amended effective January 1, 2009, to significantly narrow the gap between federal and state law regarding discrimination against and affirmative action in favor of persons with physical and mental impairments. In amending the ADA, Congress reversed Supreme Court decisions that were favorable to employers, and expanded the ADA's reach.

• Congress also passed, and President Bush signed, legislation known as the Genetic Information Nondiscrimination Act of 2008 ("GINA"). GINA prohibits employers and health insurers from discriminating against individuals based on the genetic predisposition toward a disease.

• One of President Obama's first official acts was signing into law the Lilly Ledbetter Fair Pay Act, which substantially extends the statute of limitations for plaintiffs suing to recover for equal pay violations.

• President Obama's legislative program in the employment arena is likely to extend far beyond the Lilly Ledbetter Fair Pay Act. For example, it is anticipated that there will be a significant push by the current administration to enact the Employee Free Choice Act. This law would amend the National Labor Relations Act to require the National Labor Relations Board to certify a union as the representative of the employees of an employer if a majority of employees sign union authorization cards, thus doing away with the requirement of a secret ballot election to impose a union on an employer. If passed, this law would make it substantially easier for unions to organize employees, and could signal a wave of unionization across the country. And employers are eagerly awaiting the California Supreme Court's decision in the *Brinker Restaurant* case, which may define an employer's obligations regarding providing meal and rest periods to employees, and also delineate the circumstances under which class actions challenging employer's compliance with those obligations may be successfully maintained.

V. Conclusion

Governor Schwarzenegger continues to stand up to a legislature that remains bent on creating a legal environment that drives employers – and jobs – out of California. While California employers faced fewer new laws in 2009 than the legislature wanted, employers must take note of those that did pass. More important, employers must watch developments at the federal level. No longer can it be said, "If I make sure to comply with California law, I am also certain to be in compliance with federal law."

Family Military Leave Rights Expanded by Recent Legislation

by Jon G. Miller, Shareholder, Littler Mendelson

President Obama recently signed the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84) (NDAA). Although it is primarily defense appropriations legislation, the NDAA contains several important provisions that will impact many employers and employees around the country. These provisions amend the family military leave rights under the Family and Medical Leave Act (FMLA) that first became available in 2008.

Background of the FMLA

In 1993, President Clinton signed the FMLA into law. In general, the FMLA provides that certain eligible employees, who work for employers covered by the law, could take up to 12 weeks of unpaid leave in a 12-month period for designated purposes. Eligible employees can take family leave to bond with their new child or to care for a family member with a serious health condition. An employee can also take this leave to address his or her own serious health condition. Many states, including California, have their own family and medical leave laws as well.

In 2008, President George W. Bush signed legislation that amended the FMLA, adding two new types of leave that eligible employees could take under the FMLA: (1) qualifying exigency leave; and (2) military caregiver leave. In January 2009, the U.S. Department of Labor's regulations, which clarified the new FMLA provisions, went into effect.

Qualifying exigency leave is amended to apply to families of active duty members of the U.S. Armed Services

The 2008 amendments provided that an eligible employee may take up to 12 weeks of unpaid leave if the employee's spouse, child, or parent is a member of the Reserves or National Guard when called to active duty. The 2009 regulations issued by the Department of Labor stated that this leave did not apply to the families of servicemembers who were already on active duty.

The NDAA changes this. Effective immediately, "qualifying exigency leave" is available to eligible employees who are spouses, children, or parents of members of the National Guard or the Reserves, as well as active duty servicemembers, who are called to active duty in a foreign country.

A "qualifying exigency" is a necessary activity that arises when a servicemember is deployed. Some examples of qualifying exigencies include:

1. Short-Notice Deployment: Whenever a servicemember is given seven or fewer calendar days' notice of deployment, leave taken for this purpose can be used to address any issues that arise to help the servicemember transition to his or her deployment.

2. Military Events and Related Activities: To attend official ceremonies, programs, or events sponsored by the military that are related to active duty or the call to active duty and to attend family support or assistance programs offered by the military, military service organizations, or the American Red Cross.

3. Childcare and School Activities: To arrange for child care, to provide child care on an urgent, immediate need basis, to enroll or transfer a child to a new school or day care facility, or to attend school or day care facility meetings.

4. Financial and Legal Arrangements: To make or update financial or legal arrangements to address the servicemember's absence while on active duty or call to active duty status, and to represent the military member's interests in arranging for military service benefits while the servicemember is on active duty and for 90 days following his or her return.

5. Counseling: To attend counseling for the employee, servicemember, or his/her child, where the need for counseling arises from the active duty or call to active duty.

6. Rest and Recuperation: To spend up to five days with a covered military member who is on a short-term, temporary period of rest and recuperation leave.

7. Post-Deployment Activities: To attend arrival ceremonies, reintegration briefings, and events and any other official ceremony or program sponsored by the military for 90 days following the termination of active duty and to address issues that arise from the death of a servicemember while on active duty.

8. Additional Activities: To address other events that arise out of active duty or the call to active duty, provided that the employer and employee agree that such leave will qualify as an exigency and both agree to the timing and duration of the leave.

Military caregiver leave is extended to families of Veterans and for the aggravation of pre-existing injuries

Since the FMLA was modified in 2008, an eligible employee who is the spouse, child, parent, or next of kin of a covered servicemember could take up to 26 workweeks of leave in a single 12-month period to care for the servicemember who is injured in the line of duty. The 2009 regulations stated that a covered servicemember had to be on active duty status in order for the family member to be eligible to take such leave to care for his or her family member.

The NDAA expands the definition of a "covered servicemember" to include veterans who are being treated for injuries or illnesses from their active duty service. For purposes of this new law, this leave may be taken for veterans who have served on active duty at some point in the five years before the veteran undergoes medical treatment or receives therapy that necessitates the leave.

Congress also expanded the definition of a "serious injury or illness" for purposes of military caregiver leave. The new definition covers injuries or illnesses incurred by the servicemember while on active duty, as well as injuries or illnesses incurred before the servicemember's active duty that are aggravated by service in the line of active duty.

What employers need to do

Employers must update their existing family and medical leave policies and employee handbooks to comply with these new laws. Human resource departments and supervisors should be educated on the additional circumstances that may require leave under the FMLA. The U.S. Department of Labor is expected to update its poster and model forms as a result of the passage of the NDAA. Employers should monitor these publications and begin using them as soon as they take effect.

Visit www.littler.com for more information.