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U.S. Requires Poster Change for Employers of 50 or More



Employers with 50 or more employees are required to display an updated federal family leave poster starting March 8

The final rule outlining the requirement was issued just last week by the U.S.

Department of Labor (DOL) to implement federal laws expanding Family and Medical Leave Act (FMLA) protections.

The FMLA applies to employers with 50 or more employees. The FMLA changes were legislated by the National Defense Authorization Act for Fiscal Year 2010 and the Airline Flight Crew Technical Corrections Act (signed in 2009).

The regulations were issued for public

comment February 15, 2012, and the comment period closed on April 30, 2012.

Family Leave Notice Change

The final regulation requires a change to the federal FMLA notice/poster entitled "Employee Rights and Responsibilities Under the Family and Medical Leave Act," prepared by DOL.

This is "Notice C' on the California Chamber of Commerce California and Federal Employment Notices Poster.

All covered employers (50+ employees) must display the poster summarizing the major provisions of the FMLA and telling employees how to file a complaint.

The poster must be displayed in a conspicuous place where employees and applicants for employment can see it. A poster must be displayed at all locations even if there are no eligible employees.

See U.S. Requires Poster Change: Page 7

California Health Exchange Releases Standard Plans



Covered California, the state-run program that oversees implementation of the Affordable Care Act, this week released the standards for benefit plans that will be made available to Californians who do

not rely on employer-provided insurance or Medi-Cal for health care coverage.

Four plan levels will be available: bronze, silver, gold and platinum. The percentage of coverage to be paid by the health plan ranges from 60% for bronze to 90% for platinum.

More than 2.6 million Californians will be eligible for subsidies, according to Covered California.

Households earning less than 250% of the federal poverty level can receive financial help if they enroll in a silver plan; the less income they earn, the more financial assistance they can receive.

For example, individuals earning between 150% and 250% of the federal poverty level can expect to pay \$20 to see their primary care physician, while those earning 100% to 150% would pay \$4.

To be eligible for financial assistance, consumers must purchase plans from Covered California's marketplace.

See California: Page 6

2013 Issues Guide Available on Website

The California Chamber of Commerce 2013 Business Issues and Legislative Guide is available now at www.calchamber.com/businessissues.

This easy-to-reference publication compiles background information on policies the CalChamber has identified as **Solutions for a Strong California**.

The *Guide* is a good research tool about the proposals that can serve as a foundation for positioning California to take advantage of the economic recovery,



boosting job creation and minimizing uncertainty for job creators and investors.

The digital edition makes it easy to print selected pages from the *Guide*.

CalChamber preferred and executive members currently receiving printed copies of *Alert* will be receiving hard copies of the *Guide* in the mail.

Additional hard copies

are available for purchase through the CalChamber store, www. calchamberstore.com.

Inside_

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Labor Law Corner

Vacation Earnings Cap Should Allow Enough Time to Use Vacation



Gary Hermann HR Adviser

What are the time limits and criteria applicable to a vacation earnings cap?

California Labor Code Section 227.3 spells out that whenever a contract of employment provides for paid vacations and an employee is terminated without having taken vested vacation time, all vested vacation shall be paid to the employee as wages at the final rate of pay.

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Paid Vacation Not Required

The California Supreme Court in Suastez v. Plastic Dress-Up Co. (31 C3d 774) makes clear that, upon termination, an employee must be paid for the pro rata share of his or her vacation that has accrued through the termination date.

Neither the statute nor case law requires that an employer provide vacation benefits. The law addresses only the requirements that a vacation plan, if offered, must meet.

Accrual Caps

Although the law makes it clear that vacation plans may not have a "use it or lose it" provision, the Labor Commissioner has opined that a vacation policy may establish a cap on the amount of vacation that may accrue, if not taken.

Whatever the amount an employer establishes as an earnings cap, however, the employee must have a reasonable period to get below the cap. During that period, the employee would continue to earn vacation.

For instance, if an employee earns 80 hours vacation in an earning year, the cap could not be set at 80 hours because the

employee would not have had any opportunity to get below the cap after earning the vacation amount.

The Labor Commissioner takes the position that prohibiting employees from accruing additional vacation during this period would violate Section 227.3 of the Labor Code.

Once the employee gets below the cap, accrual begins anew and vacation time is replaced up to the ceiling or "cap" imposed by the terms of the employment contract or policy.

The purpose of the cap is twofold:

- to encourage the employee to take vacation time off; and
- to prevent an employee from continuing to accrue vacation without taking time off, thus leaving the employer liable for unexpected extended leave periods or substantial unanticipated payments.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

Nevada. February 22, Sacramento.

Employers. University of California

(UC), Merced. March 13: University

of the Pacific, Stockton; March 14:

UC Merced; March 15: Fresno State

See CalChamber-Sponsored: Page 3

(916) 239-4060.

Networking/Recruiting Fair for

University. (209) 228-7272.

CalChamber-Sponsored Seminars/Trade Shows

More information: *calchamber.com/events*. Labor Law

Alternatives to Hiring Employees Webinar. CalChamber. February 21. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. May 9, Sacramento. (800) 331-8877.

Business Resources

Small Business Seminar. Board of Equalization. February 19, West Hollywood. (888) 847-9652.

ADA Seminar: Defense Strategies and Fee Awards. Association of Defense Counsel of Northern California and

Water Resources Committee: March 7, Santa Monica Fundraising Committee: March 7, Santa Monica Board of Directors: March 7-8, Santa Monica International Trade Breakfast: March 7, Santa Monica

Next Alert:

CalChamber Calendar

March 1





Court Ruling in Mixed Motive Case Offers Help on Liability for Discrimination Claims



The California Supreme Court issued a significant ruling on February 7 in a discrimination case, *Harris v. City of Santa Monica*.

Although not a complete win for the business community, the

case, overall, provides helpful language for employers on the issue of liability for discrimination claims.

'Mixed Motive' Cases

The case addresses what happens when an employer terminates or takes some other type of adverse action against an employee for a legitimate business reason, such as poor performance, but there also is evidence that the employer engaged in discriminatory conduct against the employee.

This usually is referred to as a "mixed motive" case: the employee has evidence

of unlawful discrimination; the employer has evidence that it would have made the same decision anyway.

The Supreme Court significantly changed the liability landscape in such cases by ruling that "...when a jury finds that unlawful discrimination was a substantial factor motivating a termination of employment, and when the employer proves it would have made the same decision absent such discrimination, a court may not award damages, backpay, or an order of reinstatement." [Emphasis added.]

Substantial Discrimination

An employer is not completely free, however. While an employer is allowed to make legitimate business decisions regarding such issues as employee performance and related discipline, the court fittingly noted that the intent of the Fair Employment and Housing Act is to prevent discrimination from occurring at work. In those cases where unlawful discrimination played a "substantial factor" in the adverse action, the

employer does not get a complete defense to liability by showing it would have made the same decision anyway.

The employee could be awarded declaratory relief (relief stating that the employer engaged in an unlawful practice), injunctive relief (an order stopping further conduct) and, when appropriate, reasonable attorney fees and costs.

More Information Ahead

There is a great deal of additional helpful language for employers in this case. The California Chamber of Commerce will discuss this case in more detail in upcoming issues of *HRCalifornia Extra* (an e-newsletter that covers employment law issues and is available to CalChamber customers) and in the March edition of *California Employer Update*, a subscribers-only monthly newsletter.

HRCalifornia members have access to a full library of information on how to prevent discrimination in the workplace and avoid claims for wrongful termination. Staff Contact: Gail Cecchettini Whaley

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

Beverly Hills Tomorrow. Beverly Hills Chamber of Commerce. April 9, Beverly Hills. (310) 248-1000.

Innovation Economy Expo. Innovation Economy Konnect, Inc. May 9, Ontario. (310) 613-4131.

Government Relations

Condoleezza Rice: Advancing Women's Leadership. University of the Pacific. March 21, Stockton. (209) 946-2030.

International Trade

China-Americas Trade on the Pacific Rim. Institute of the Americas. February 20, Los Angeles. (858) 453-5560.

Investing in Bulgaria. Financial Times Live. February 26, San Jose.

Bulgaria Information Technology/Venture Capital Investment Forum. Financial Times Live. February 28, Palo Alto.

CeBit 2013: Shareconomy. Deutsche Messe. March 5–9, Hannover, Germany.

International Fair-Indonesia. Indonesia Furniture Industry and Handicraft Association. March 11–14, Jakarta, Indonesia.

Asia Pacific Business Outlook. U.S. Commercial Service. April 8–9, Los Angeles. (213) 740-7130. Hannover Messe 2013: Integrated Industry. Deutsche Messe. April 8–12, Hannover, Germany.

China-U.S. Business Summit 2013. China-U.S. Business Summit Committee. April 28–30, Los Angeles. (562) 437-8885.

World Trade Week Kickoff Breakfast. Los Angeles Area Chamber. May 2, Los Angeles. (213) 580-7569.

China International Technology Fair. Shanghai International Technology Exchange Center. May 8–11, Shanghai, China.

2013 USC Global Conference. University of Southern California. May 23–25, Seoul, Korea. (323) 442-2830.



Governor Names New Cal/OSHA Standards Board Chair

Governor Edmund G. Brown Jr. has named a chair and a new public member to the California Occupational Safety and Health (Cal/OSHA) Standards Board.

Labor representative David Thomas of Modesto has been appointed chair of the board, where he has served since 2010.

Thomas has been a business representative at the Northern California District Council of Laborers since 2009, a position he also held from 1994 to 2001.

He has served as secretary-treasurer of the San Joaquin Building Trades Council since 2004.

Patricia Quinlan of San Francisco was named to the public member spot on the Cal/OSHA Standards Board.

Quinlan has been deputy director at the Center for Occupational and Environmental Health at the University of California, Berkeley since 2011. She is a member of the American Academy of Industrial Hygiene, American Industrial Hygiene Association, American Public Health Association and American Conference of Government Industrial Hygienists.

Both positions had been vacant since the December 2012 retirement of former chair and public member John MacLeod, who had previously served eight years and retired as executive officer of the Cal/ OSHA Standards Board.

CalVet Offers Tips on Becoming Veteran-Friendly Employer

The significant tax breaks and other incentives available to employers that hire veterans have inspired many to increase their veteran recruitment efforts.

The California Department of Veterans Affairs (CalVet) has outlined steps companies can take to ensure job-seeking veterans respond to recruitment efforts and feel welcome once hired:

- Become knowledgeable about the types of jobs and levels of responsibilities a veteran or transitioning service member may have had while in the military. In simple terms, commissioned officers plan, enlisted personnel execute, and non-commissioned officers supervise with the commissioned officer's plan in mind. Warrant officers serve as subject matter experts.
- Take advantage of the Occupational Information Network (O*NET) at the U.S. Department of Labor. This system can help translate military occupational classification codes and military titles into civilian equivalents to enable employers to better evaluate a veteran job seeker's qualifications.
- Learn something about military culture. Although created specifically for behavioral health psychologists, the Center for Deployment Psychology offers a free online tutorial, Military Cultural Competence. This Web-based training course is a quick and easy way to gain a better perspective on military culture.
- Consider making available someone familiar with military experience and

culture to help veterans and wounded warriors with the employment process, if necessary.

• Review the company's Employee Assistance Program (EAP). Make sure it is equipped to offer the full spectrum of behavioral health issues that affect some veterans.



Encourage EAP personnel to develop partnerships with local veterans service organizations, county veterans service offices and CalVet to stay connected and updated on new resources. Small businesses that do not offer EAP services may be able to form a consortium to do so by joining with other small businesses.

• Understand employer responsibilities under the Americans with Disabilities Act (ADA).

Facts about the ADA's reasonable accommodation can be found in a variety of sources, including ADA's National Network of Disability Business Technical Assistance Centers. There are several sources for financial assistance and tax incentives to help employers (including small employers) make accommodations and comply with ADA requirements.

Make assistive technology available

to those who need it. The National Assistive Technology Technical Assistance Partnership provides technical assistance regarding funding of assistive technology. Funding may be available through the State Assistive Technology Act.

- Promote an inclusive workplace to retain veteran employees. Specific actions to enhance veteran-focused retention efforts include:
- ✓ Develop and promote peer mentorships in the workplace—vet to vet;
- ✓ Practice veterans appreciation and promote a veteran-friendly workplace;
- ✓ Recognize that military families may have different needs than civilian families;
- ✓ Consider participating in local Yellow Ribbon Reintegration Programs.
- Help veterans and their families get connected to the state and federal benefits earned through military service by referring them to the CalVet website, www.calvet.ca.gov or to a county veterans service office (CVSO). To find the nearest CVSO, visit www.cacvso.org and click on Contact Us.
- Create a page on the company website or intranet that offers information and resources specifically for veterans and their families. For help, contact Carolyn Ballou at CalVet, *carolyn*. *ballou@calvet.ca.gov*.

For more information, visit the America's Heroes at Work website at *www.americasheroesatwork.gov*.



Small Business Advocate of the Year

Ventura Company Owner Fights for Burdened California Businesses



Suzanne Scar

It was only six years after moving to Santa Barbara County in 1995 that Ohio native Suzanne Scar became a small business owner.

Scar and her husband, Michael, bought a business

from a friend and revamped it to form Central Coast Imaging Solutions, a company that provides sales and service of office equipment to local businesses.

Until 2007, Central Coast Imaging operated in Santa Barbara and Ventura counties, but due to the economy and burdensome legislation, the business downsized staff and consolidated to the Ventura store.

That was not the first time Scar faced downsizing because of legislation.

'Hooked' on Advocacy

In 2006, workers' compensation rates were so "dangerously high," that Scar was "faced with laying off employees in order to meet payroll," she said. This prompted her to attend the California Chamber of Commerce Business Legislative Summit in Sacramento, along with the Regional Legislative Alliance (now the Chambers of Commerce Alliance) consortium to talk with legislators about business issues.

In particular, legislators heard business advocates and owners talk about the negative impact the high rates workers' compensation had on their business. Eventually, reforms were made to reduce workers' compensation rates.

After that trip, Scar said she was "hooked."

She now belongs to four chambers of commerce. She has served on the boards of three of the chambers, as chairperson of two chamber boards, as chair of the Oxnard and Carpinteria Advocacy committees, and as chair of the 2011 Chamber of Commerce Alliance Board.

Scar's Efforts

In 2011, Scar was in Sacramento approximately eight times speaking out primarily on redistricting and redevelopment agency issues. She also advocated on other issues throughout the year, such as: AB 52 (Feuer; D-Los Angeles) insurance rates (labeled a job killer by the CalChamber), card check legislation, minimum wage increases and indexing, bereavement leave, and paid sick days.

Because of her advocacy efforts on behalf of small businesses, the CalChamber presented Scar with a 2012 Small Business Advocate of the Year Award.

In recommending Scar for the award, Steven Buenger, chairman of the Oxnard Chamber Board, said he was "extremely impressed by her knowledge of pending legislation that would have an effect on business."

Scar's presence in both Sacramento and Ventura County, said Buenger, "elevated the image of the Oxnard Chamber and brought the small business perspective to many issues."

Importance of Advocacy

In an interview with the Camarillo Chamber, Scar said she was intimidated by advocacy at first, but then realized politicians needed and listened to others' opinions.

"... Most politicians are very friendly and appreciate a different perspective from their constituents," she told the chamber. "Often, they will provide you with honest insight on how to resolve or help with an issue."

Explaining the impacts of legislation on California businesses is why advocacy is so important, she said. "Our legislators are trying to improve our 'world' by introducing legislation to correct a situation," Scar said. "Their solutions, while helpful to many, may impact others negatively. It is imperative that they are made aware of all the consequences and solutions."

Be Proactive

For those interested in getting started with advocacy efforts, Scar recommends visiting a local chamber of commerce or attending a business advocacy group. Some of the roles of a chamber of commerce, Scar said, are "to identify how upcoming (or current) legislation impacts businesses and to support a healthy commerce through advocacy."

For those in Southern California wishing to get involved with advocacy, Scar pointed to the Chamber Business Advocacy Committees and Chambers of Commerce Alliance.

Scar stressed the need for businesses to be more involved. "As professional business folk, we need to work with professional legislators to enhance our business environment," she said.

In her spare time, Scar and her husband rescue dogs. They also enjoy traveling to unique destinations and to visit family.

CalChamber Seeks Nominees for Small Business Advocate Award

The California Chamber of Commerce is seeking nominations for its Small Business Advocate of the Year Award.

Each year, the CalChamber recognizes several small business owners who have done an exceptional job with their local, state and national advocacy efforts on behalf of small businesses. The application should include information regarding how the nominee has significantly contributed as an outstanding advocate for small business.

The application also should identify specific issues the nominee has worked on or advocated during the year.

Award nominations are due to the

CalChamber Local Chamber Department by April 15.

The nomination form is available on the CalChamber website at *www. calchamber.com/smallbusiness* or may be requested from the Local Chamber Department at (916) 444-6670.



Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Bill to Improve Local Water Quality Passes



A California Chamber of Commercesupported bill funding programs that will improve water quality in the Salinas Valley passed the Assembly Environmental Safety and Toxic Materials Committee with a unanimous vote this week.

AB 1 (Alejo; D-Salinas) begins the process of identifying affordable and efficient ways to provide access to safe drinking water.

The Salinas Valley is one of the most productive agricultural areas in the state and home to thousands of people and businesses. Unfortunately, over many years, the water quality has declined. Nitrates contaminate the groundwater, posing serious health risks to those who live there as groundwater is the major source of drinking water.

Small businesses operating in the Salinas Valley, much like the residents,

are interested in access to safe drinking water. They most often live in the valley, intricately entwined in the neighborhoods they serve. Unsafe drinking water adversely affects not only public health but business viability.

Key Vote

AB 1 passed Assembly Environmental Safety and Toxic Materials on February 12, 6-0.

Ayes: Alejo (D-Salinas), Dahle (R-Bieber), Bloom (D-Santa Monica), Donnelly (R-Twin Peaks), Stone (D-Scotts Valley), Ting (D-San Francisco).

Absent/abstaining/not voting: B. Lowenthal (D-Long Beach).

AB 1 will be considered next by the Assembly Appropriations Committee; no hearing date has been set.

Staff Contact: Valerie Nera

California Health Exchange Releases Standard Benefit Plans

From Page 1

The state is requiring that all carriers offer these same standard designs to all individuals and small businesses, whether inside or outside of Covered California.

Higher-income individuals choosing one of these plans would not be eligible for financial help, but would be assured that the plan contains the same essential health benefits offered, and the same benefit design so they can make true comparisons.

Examples of benefits, their costs, and

typical premium costs are available on the newly launched Covered California website, www.CoveredCA.com.

A fact sheet for small business and another explaining the small business tax credit also are available.

The site includes a cost calculator to help consumers estimate the potential financial support for which they are eligible and the estimated cost of insurance. Fact sheets are available in both English and Spanish. Additional fact sheets and translation of the materials in 11 more languages is expected to be added.

The open enrollment period begins this fall for coverage that starts January 1, 2014.

Covered California also announced it has launched a social media presence on Facebook, Twitter, YouTube and Google+.

Covered California identified critical next steps as selecting insurance carriers that will be allowed to participate in Covered California, and determining plan pricing.





U.S. Requires Poster Change for Employers of 50 or More

From Page 1

The FMLA includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period.

Definition Clarified

The revised federal FMLA poster clarifies that in addition to those currently serving, a "covered servicemember" also includes veterans discharged in the last five years.

Among the mandatory revisions on the federal poster is a note that the FMLA definitions of "serious injury or illness" for current servicemembers and veterans "are distinct from the FMLA definition of 'serious health condition."

A second mandatory note states that special hours of service eligibility requirements apply to airline flight crew employees.

Although the new poster has a revision date of February 2013, the DOL specifically noted that employers may either start using the new poster immediately or may use the old FMLA poster through March 7, 2013.

Changed requirements taking effect on March 8, according to the DOL, include "military caregiver leave for a veteran, qualifying exigency leave for parental care, and the special leave calculation method for flight crew employees."

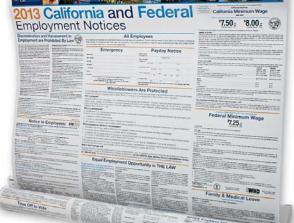
Revised Poster

The California and Federal Employment Notices Poster with the revised federal FMLA Notice C is available for purchase at www.calchamberstore.com.

The mandatory changes to the FMLA Notice C affect: private-sector employers, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer; public agencies, including a local, state, or federal government agency, regardless of the number of employees; or public or private elementary or secondary schools, regardless of the number of employees.

Customers who purchased the Poster Protect® option will receive a replacement poster, paying no shipping, handling or tax for the FMLA notice update.

As implementation of workers'



compensation reform measures continues, there is the potential for additional mandatory changes later this year.

The option to enroll in Poster Protect® also is available at the CalChamber Store. Staff Contact: Gail Cecchettini Whaley

Quick Answers to Tough HR Questions



IRS Offers Info to Help Small Business Owners with Common Problems

Recordkeeping and understanding gross business receipts are two areas that commonly trip up new business owners, according to the Internal Revenue Service (IRS).

To help small business owners and entrepreneurs, the IRS has launched an effort to make them more aware of resources and information available online.

The Small Business and Self Employed Tax Center at *IRS.gov* is the central page for everything small business. The page is the jumping off point for those interested in starting a business and includes links to resources to assist in making business decisions.

In the IRS video portal, business owners can find links to videos on topics ranging from business expenses to filing and paying taxes and IRS audits.

The IRS also has virtual small business workshops, interactive lessons to help new business owners learn about their tax rights and responsibilities.

The IRS broadcasts free webinars featuring panel discussions on various subjects with IRS experts and industry professionals aimed at educating tax professionals on tax issues affecting them and their clients.

Small business owners can subscribe

to e-News for Small Businesses, a free twice-monthly newsletter that provides tax information geared toward the small business owner and self-employed. Recent topics covered in the newsletter included staying on top of employment tax obligations, estimating taxes, and tips for choosing a tax preparer.

Also available is a downloadable tax calendar, as well as multiple forms and tax publications relevant to the small business owner.

News and information is available from the IRS on Facebook, Twitter, Tumblr and the IRS YouTube channel.



LIVE WEBINAR | FEBRUARY 21, 2013 | 10:00 - 11:30 A.M. PT Alternatives to Hiring Employees



Not every job requires a regular full-time or even a part-time employee. But you do have options for getting the work done, especially when unexpected circumstances like a leave of absence or a special project requires backfill.

Join CalChamber employment law experts Erika Frank and Susan Kemp for a live, online discussion of your hiring alternatives, including seasonal workers, employee leasing, temporary employees and student internships.

Learn what alternatives are feasible for your organization, each bringing different employer liabilities and responsibilities. We'll provide compliance guidelines, addressing wage and hour issues, consequences of misclassifying employment status and more.



REGISTER at calchamber.com/feb21webinar or call (800) 331-8877 and mention priority code REG.

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