PIASC

WatchDog

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Printing Industries Association of Southern California
Phone: (323) 728-9500 Web: www.piasc.org

In This Issue

Near Misses & Workplace Safety

While OSHA "strongly encourages" employers to investigate all incidents in which a worker is hurt, what about close calls and near misses? Say, for example, that while walking through the job floor an employee slips, grabs hold of a shelving unit to steady himself, and causes a heavy item to fall and hit the ground. If no one is injured, all's well that ends well—right?

Actually, both OSHA and workplace safety experts recommend that you investigate near misses like this, too. These investigations are an often overlooked "zero cost learning tool" that can help you prevent workplace injuries from occurring.

❗ Be sure that your reporting policies include near miss incidents, and that all near miss investigations are thoroughly documented. Proof of your proactive efforts can be used in your defense against future OSHA actions.

What's the Status of Overtime Rules?

While employers nationwide breathed a sigh of relief in September when the Federal Court in Texas invalidated the US Department of Labor's (DOL's) 2016 overtime rule, California employers could not.

Designed to make millions more Americans eligible for overtime pay, the DOL rule would have increased the minimum salary level for executive, administrative and professional employees to be exempt from the overtime protections of the Fair Labor Standards Act—from $23,660 per year to $47,476 per year. As a result of the Court's action, the 2004 rule remains in place at the national level.

However, in California the state law prevails and its salary standard is higher than the current national level. To qualify for the executive, administrative or professional overtime exemptions, employees in California must:

- Spend more than 50 percent of their time performing exempt duties, and
- Earn a monthly salary equivalent to twice the state minimum wage for full-time employment (i.e., 40 hours a week).

Based on the current minimum wage of $10.50 per hour for employers with at least 26 employees, this minimum monthly salary level works out to $43,680 per year. When California's minimum wage increases to $11.00 per hour on January 1, 2018, the minimum salary requirement will increase to $45,760 per year.

❗ Review your employees' job descriptions and actual duties, and ensure that only those who meet both the duties and salary tests are classified as exempt.

New California Tax Agencies

Recently enacted legislation strips the California State Board of Equalization (BOE) of two of its core functions (collecting and administering numerous taxes and fees, and hearing and deciding tax appeals) and also creates two new tax agencies. These changes affect all companies doing business in California. The main responsibilities of each agency are:

- **BOE** – Oversee property tax assessments; set the rate for gas taxes; assess taxes on pipelines, insurance companies and alcoholic beverages.
- **Department of Tax and Fee Administration** *(new)* – Administer sales and use taxes, excise taxes and certain fees.
- **Office of Tax Appeals** *(new)* – Beginning January 1, 2018, assume the adjudicatory powers of the BOE for all taxes and fees except state-assessed property taxes, insurance taxes and alcohol taxes. Tax appeal panels will consist of three administrative law judges designated by the Director, who will be appointed by the Governor. A written opinion will now be issued by the administrative law judge for each appeal.

❗ If you plan to file a tax appeal, be aware that you can now be represented by anyone of your choosing who is at least 18 years old, including a non-attorney.

Source: Windes, an audit and tax advisory.

Criminal History Questions Banned

Effective January 1, 2018, California public or private employers with five or more employees will be banned from asking job applicants about their criminal records (either verbally or on a job application form), and/or otherwise seeking this information. Referred to as the statewide "Ban the Box" ordinance, AB 1008 prohibits affected employers from asking questions about an applicant's criminal history or even "considering" the applicant's conviction history until after a conditional job offer has been made.

Once the conditional job offer has been made, if the employer decides to rescind the offer based solely or in part on the applicant's conviction history, a specific procedure referred to as the "fair chance" process must be followed. Among other things, this process includes justifying the decision, providing the applicant with a written notice that contains certain required information and attaches the conviction history report, and giving the applicant at least five business days to respond before you can make a final decision.

If the applicant gives written notice that he or she disputes the accuracy of the report and is taking specific steps to obtain evidence supporting that assertion, then the applicant must be given five additional business days to respond. If you make a final decision to withdraw an offer of employment solely or in part because of the conviction history, you must notify the applicant in writing of the withdrawal, any procedure you have to request reconsideration, and their right to file a complaint with the Department of Fair Employment and Housing. You may justify or explain your reasoning for making the final disqualification from employment.

Positions to which the law (such as SEC regulations) requires employers to check criminal history for employment purposes or restricts employment based on criminal history will be exempt from this new law.

❗ If you have five or more employees, remove any questions about criminal history from your job application form and interview guidelines. Also, be sure that you do not use any background checks that reveal criminal conviction history until after a conditional job offer is made. Then, if you do the check and want to take adverse action, follow the required process and comply with all applicable documentation and recordkeeping requirements.

Salary History Questions Banned

Effective January 1, 2018, all California employers will be prohibited from asking job applicants about their salary history, including both compensation and benefits.

AB 168 makes it unlawful for you to seek or rely on salary history information verbally or in writing, either personally or through an agent. However, applicants may voluntarily and "without prompting" disclose this information. In this case, you are permitted to use the volunteered information when setting the applicant's starting salary. Also, AB 168 does not apply to salary history information that is disclosable to the public pursuant to federal or state law, such as salary information for public employees that is largely a matter of public record. In addition, the law also requires that, upon "reasonable request," you must provide a pay scale for a position to an applicant.

❗ Remove any questions about salary history from your job application form and revise your interview guidelines. Be prepared to provide pay scale information to applicants.

Family Leave Law Expanded to Small Businesses

Governor Brown has signed the *New Parent Leave Act* into law, expanding California's family leave law to employers with 20 to 49 employees. Effective January 1, 2018, eligible employees can take up to 12 weeks of unpaid, job-protected parental leave to bond with a new child. This leave can be taken any time within one year of the child's birth, adoption or foster care placement. During this parental leave, employees are entitled to use any type of accrued paid time off, and employers must maintain and pay for the employee's continued coverage under a group health plan at the same level and under the same conditions that coverage would have been provided had the employee not taken leave.

Eligible employees are those that:

- Have worked for the employer for at least 12 months;
- Worked at least 1,250 hours for the covered employer in the 12-month period preceding the leave; and
- Work at a worksite that has 20 to 49 employees within a 75-mile radius.

The New Parent Leave Act does not apply to employees who are covered by both the federal *Family and Medical Leave Act* (FMLA) and the *Moore-Brown-Roberti Family Rights Act* (CFRA), which is more commonly known as the *California Family Rights Act*. Both of these Acts already provide 12 weeks of unpaid, job-protected leave for parental bonding purposes to eligible employees of employers that have at least 50 employees.

❗ Determine if your business is covered under the Act. If it is, develop Leave of Absence forms and procedures, and ensure that your managers are all aware of the Act's provisions, especially those that prohibit retaliation and discrimination.

Voluntary Cooperation with ICE Prohibited

As part of California's new designation as a "sanctuary state," effective January 1, 2018 all California employers will be prohibited from voluntarily allowing Immigration and Customs Enforcement (ICE) agents to access non-public areas of their worksite and/or to access, review or obtain their organization's employment records unless ICE provides a judicial warrant.

Known as the *Immigrant Worker Protection Act*, AB 450 also requires you to provide your workers with notice of certain immigration enforcement actions, such as inspection of I-9 forms and other employment records by an immigration agency, within 72 hours of receiving the federal Notice of Inspection. Penalties for failure to comply with this law range from $2,000 to $10,000 per violation.

Note: This law does not apply to I-9 forms and other documents for which a Notice of Inspection has been provided, or instances where federal law requires employers to provide access to records.

❗ Review and revise your policies and procedures to verify compliance with the law, especially the employee notification provisions. Train supervisors and front-line staff how to handle visits from ICE agents.

Changes to Anti-Retaliation Laws

Starting January 1, 2018, your company's ability to defend itself against retaliation and whistleblower claims in front of the California Division of Labor Standards Enforcement (DLSE), and take related court action, will be much more difficult.

SB 306 revises portions of the California Labor Code, which already prohibits employers from discharging, or otherwise discriminating or retaliating against, employees or job applicants for various activities protected under the California Labor Code. Among other things, provisions of SB 306:

- Allow the DLSE to apply for injunctive relief to force you to reinstate an employee pending the two to three years it can take to litigate their claim, before an investigation has been completed and any finding of violation has been made. This is in contrast to the current law, which only allows for this type of injunctive relief after the claim has been investigated and determined to be valid.
- Dramatically reduces the burden of proof for such injunctive relief to a mere showing that a "reasonable cause" exists to show that an employee was unlawfully discharged or subjected to adverse action.
- Authorizes the Division of Labor Standard Enforcement (DLSE) to investigate an employer without receiving a complaint of retaliation, if it "suspects" that retaliation has occurred.
- Provides an accelerated method for the DLSE to enforce violations. Instead of having to initiate civil actions, as is the case under current law, the Labor Commissioner will be authorized to issue a citation directing an employer to take various remedial actions.
- Subjects employers to civil penalties of $100 per day, up to a maximum of $20,000, for "willful" refusal to cooperate with a final order of the court.

Note: Even if the DLSE dismisses the complaint, the employee will still be allowed to file a civil action thereafter and seek all appropriate relief.

❗ Be sure that all of your organization's disciplinary and discharge actions are based on legitimate business reasons, are well-reasoned and thoroughly documented, and are not retaliatory for engaging in protected activities.

New Sexual Harassment Training Requirements

Since 2005 California employers with 50 or more employees have been required to provide at least two hours of anti-sexual harassment training to all supervisory employees every two years. This is often called "AB 1825 training." SB 396 states that as of January 1, 2018, these two-hour training sessions must also include training on harassment based on gender identity, gender expression and sexual orientation. Furthermore, this new component of the training must include practical examples of these types of harassment, and be presented by trainers or educators with knowledge and expertise in those areas.

In addition, affected employers must also display a poster developed by the Department of Fair Employment and Housing regarding transgender rights. You can download this poster at *bit.ly/TWOAposter.*

This law, also known as the *Transgender Work Opportunity Act*, is the first of its kind nationwide.

❗ If you have 50 or more employees, update your mandated AB 1825 training to include these new components, and display the required poster.

Are You Prepared for an Active Shooter?

From well-armed disgruntled employees to spurned lovers and crazed psychopaths, the chances of an active shooter situation occurring at your workplace seems to be increasing over time. Are you prepared to deal with this?

If an active shooter were in your building, would anyone know what to do? How should they respond? Where can they hide? What are the best routes out of the building?

Under OSHA's General Duty Clause, you are required to protect employees against "recognized hazards likely to cause serious injuries or death." In today's environment, this means that an Active Shooter Emergency Response Plan should be an integral part of your organization's overall workplace violence prevention and response policies. At a minimum, this Plan should address:

- **Developing a schematic of each building** – Where are the exits? Where can people hide? How can they barricade doors from the inside?
- **Identifying responders** – Make plans to assist those with special needs. Identify staff members who have completed special medical training, such as first aid or CPR.
- **Reporting the situation** – When an employee identifies that an active shooter situation is occurring, who should they notify (provided it is safe for them to do so)? Who will call 911?
- **Alerting everyone about the situation** – Your alert system might include intercoms, panic buttons, handheld radios for key people, a public-address system, a way to generate mass notifications to staff via cell phones, and more.
- **Providing training on response options** – The basic choices are to evacuate, hide, or—as an absolute last resort if your life is in imminent danger—fight.

❗ For more information, download the Department of Homeland Security's Active Shooter booklet at *bit.ly/ASBooklet* and poster at *bit.ly/ASPoster*. For a referral to a qualified training professional who offers special PIASC member pricing, contact Cheryl Chong at (323) 728-9500, ext. 218.

L.A.'s "Ban the Box" Ordinance

If you are operating within the City of Los Angeles, be aware that the City is **now actively enforcing** its *Fair Chance Initiative for Hiring Ordinance* (FCIHO), which was enacted on January 22, 2017. FCIHO applies to private employers who either: (a) have ten or more non-exempt employees who perform at least two hours of work on average each week within the City limits; or (b) have ten or more employees plus a contract or subcontract with the City of Los Angeles.

Known as the "Ban the Box" ordinance, this law prohibits affected employers from asking job applicants if they have a criminal history, or otherwise seeking any information about their criminal history. These questions cannot be asked unless and until a conditional offer of employment is made to the applicant. Even then, the employer must follow certain steps before taking any adverse action against the applicant based on the applicant's criminal history.

Note: AB 1008, a statewide "Ban the Box" law, will go into effect on January 1, 2018. This law contains requirements similar to the FCIHO and will apply to all California employers with five or more employees.

❗ If you are affected by FCIHO, immediately remove any questions about criminal history from your job application form, and be sure that hiring managers do not make any prohibited verbal or written inquiries.

Clarification: New Domestic Leave Notice

The last issue of *WatchDog* reported on AB 2337's new Domestic Leave Notice, stating that this must be provided to all new hires and other employees upon request. To clarify, this law only affects employers with 25 or more employees.

Top OSHA Violations

Because safety is a daily concern for all employers, it's a good idea to regularly review your safety program. As part of this review, it can be helpful to consider the issues which OSHA recently identified as among the most-cited violations:

- **Hazard Communication** – Failure to have a written hazard communication program and failure to provide employee access to safety data sheets.
- **Respiratory Protection** – Failure to establish a written respiratory protection program and to provide medical evaluations.
- **Lockout/Tagout** – Inadequate worker training and inspections to ensure that dangerous machines are properly shut off and not able to be started up again until maintenance work is completed.
- **Ladders** – Improper use of ladders (including using the top step), and use of damaged ladders.
- **Powered Industrial Trucks** – Inadequate employee training and refresher training. Note: PIASC offers a Forklift Training Manual for its members. To obtain a copy, contact Emily Holguin at (323) 728-9500 ext. 262.
- **Machine Guarding** – Failure to guard points of operation.
- **Fall Protection Training** – Failure to train employees to identify fall hazards and use fall protection equipment.
- **Electrical** – Existence of electrical hazards in the workplace, including temporary wiring in lieu of permanent wiring.

❗ Review your safety programs, records and procedures, and update all as needed.