

California Employers Association



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HR TOPICS THAT THE DENTIST MUST KNOW

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Introduction & Disclaimer

CEA – California Employers Association

- Over 75 years of HR support for employers
- On-site, Email, Training, Compliance, HR Hotline
- Subject Matter Experts

Consult any attorney about any issues of legal significance to you.

This presentation should not be relied upon as legal advice.

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CEA's Top Ten List

The Top 10 Ways Employers Can Stay Out of Court



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#10: ESTABLISH STRONG HIRING GROUND RULES


"You never get a second chance to make a first impression."




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Establish Strong Hiring Ground Rules

- Hire Slow
- New Hire Orientations set the tone
- Employee Handbook Review
- At-Will clause
- Sign off sheet
- Required Hiring Documents (10)




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Hire Slow




- Take your time
- Determine what you need
- Hire the right person for the job
- A work relationship is like any other relationship, don't jump into it without doing some research
- Working Interviews

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At-Will Advice for Employers

- Be **consistent** in offer letters, handbook, etc.
- Indicate who has the authority to modify the at-will relationship and that modifications must be in writing.




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REQUIRED HIRING FORMS

- DHS I-9 Form
- W-4 Form
- Acknowledgement of Receipt of IIPP Manual
- Copy of Employee Rights under Workers' Compensation
- Personal Physician/Chiropractor Pre-Designation Form
- Form DFEH 185 Harassment and Complaint Procedure
- Form DE 2515 EDD Disability Insurance Pamphlet
- Form DE 2511 Paid Family Leave Brochure
- Form DE 34: EDD Report of New Employee(s)
- Wage theft Prevention Act Form (Labor Code 2810.5)
- Written Commission Agreements



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#9: DON'T MESS AROUND WITH CALIFORNIA'S LEAVE LAWS

California has 24 protected leave laws!!



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Understanding California's Leave Laws

- Each leave law works differently
- Not all leave laws apply to your practice
- Some leave laws allow the employer to require employees to use vacation or sick time
- Paid Sick Leave




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Paid Sick Leave in CA



**Healthy Workplaces,
Healthy Families Act of 2014**
Effective: July 1, 2015

Purpose – 24 hours/3 days off for all employees to address their own health needs and health needs of their families. To protect employees from losing their jobs when they use sick days

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Includes . . .

- Full-time, Part-time
- Exempt, Non-Exempt
- Seasonal, Temporary, On-Call
- Outside Salespersons
- Paid Interns/Externs
- Even out-of-state employees

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When Did This Happen....?

January 1, 2015

- Poster
- Wage Theft Notice to nonexempt employees

"For employees hired prior to January 1, 2015, the employer is required to provide a revised Notice to Employee or otherwise inform each employee of the information regarding paid sick leave within 7 days of the change, using any of the alternative methods specified in Labor Code section 2810.5(b)."

July 1, 2015

- Must have begun providing paid sick leave benefit
- Recordkeeping



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You Have 3-ish Options

- Accrual Method
- Lump Sum Method
- Employer Policy



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Option 1 - Accrual Method

- Employees begin earning time on their 1st day of work
- All employees earn 1 hour of paid sick leave for each 30 hours worked
- **Includes all** hours worked, including overtime (not holidays, vacay)
- Exempt employees are assumed to work 40 hours/week
- Employers must allow an accrual of 48 hours **or 6 days**
- Usage may be capped at 24 hours **or 3 days**
- Accrued, unused time must carry over to the next year
- Employees must be allowed to take PSL by 90th day of employment
- Not paid out at termination



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Option 1A – Different Accrual Method

- May use different **regular** accrual method
- Employee must have 24 hours available by 120th day of employment, calendar year or each 12 month period
- All the other provisions, as in Option 1, apply



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Option 1A – Minimum Accrual Rates

Monthly	6 hours / month
Semi-monthly pay period	3 hours / pay period
Biweekly pay period	2.8 hours / pay period



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Option 2 - Annual Lump Sum

- Lump sum
- Employer grants at least **24 hours or 3 days** of paid sick leave annually
- July to July, anniversary date, calendar year, etc.
- No accrual or carryover required
- Not paid out at termination of employment
- Employees are able to use the time on the 90th day of employment



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“3 DAYS”

“3 DAYS” means the equivalent of the number of hours regularly scheduled multiplied by 3.

Example: For an employee scheduled to work four 10-hour days, 3 days would equal 30 hours (not 24).


See this Opinion Letter:
<http://www.dir.ca.gov/dlse/opinions/2015.08.07.pdf>

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Option 3 – Existing Employer Policy

- Use current PTO policy as long as it:
 - ▣ Existed prior to January 1, 2015
 - ▣ Accrues at least 8 hours within 3 months of employment
 - ▣ Eligible to earn at least 24 hours within 9 months


.....Not our favorite Option

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Option 3 – New Paid Leave or PTO Policy

Not required to provide additional paid sick leave if paid leave or PTO policy:

- Meets accrual, carryover and use requirements of law; or
- Provides at least 24 hours **or 3 days** of paid sick leave (or equivalent paid leave or PTO) per year of employment, calendar year, or 12 month basis
- **And** makes the paid leave available for the **same purposes** and under the **same conditions** as in the law

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#8: ENSURE EXEMPT EMPLOYEES ARE REALLY EXEMPT

COSTLY MISTAKES

- ✓ **\$90M** to 2,400 claims adjusters at Farmers Insurance Exchange for misclassification resulting in unpaid overtime
- ✓ **\$11M** agreement for overtime wages for Longs Drugs store managers and assistant store managers in California
- ✓ **\$12M** in settlements by Taco Bell for overtime violations to employees in California and Washington.



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Definitions

EXEMPT

- Paid a flat salary for the skill they bring to the job
- Exempt from wage orders & overtime laws, etc.
- Must pass exemption test

NON-EXEMPT

- Paid by the hour for the work they do
- Not exempt from wage orders & overtime laws
- Breaks/lunches/OT

Exemption tests are critical!



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Exemptions from OT

- Exempt from Overtime
 - ▣ Administrative
 - ▣ Executive
 - ▣ Professional
 - ▣ Computer Professional/Commissioned Sales People
- The Independent Contractor (aka 1099 Contractor)
- Alternative Workweeks – Pros and Cons



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#7 INDEPENDENT CONTRACTORS

An individual is a general contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.

- Make sure your independent contractors:
 - Have a Federal taxpayer id # (not SSN)
 - IC Agreement – CEA Website (HR Forms)
 - For more information go to EDD website: http://www.edd.ca.gov/pdf_pub_ctr/de38.pdf
- \$5,000 to \$15,000 for each violation
 - A minimum of \$10,000 and maximum of \$25,000 per violation for a pattern



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#6: PROVIDE PROPER BREAKS, LUNCHES & OVERTIME

- > Wage and Hour claims can go back 3 years + waiting time penalties
- > The mean per-plaintiff settlement amount was approximately \$5,700, and the median was approximately \$3,500.



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Breaks / Rest Period Obligations

- An employer is to ***“authorize and permit”*** an employee to take ten minutes “net” rest time for every four hours worked
- A rest period is to be in the middle of a work period
- Rest periods need not be recorded on time cards

Hours Worked	Rest Periods
0 – 3.5	0
3.5 – 6	1
6 – 10	2
10 – 14	3



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Lunches / Meal Period Obligations

- An employer **may not permit an employee to work for a period of more than five hours** per day without providing a meal period of not less than 30 minutes, except when the total work period per day is no more than six hours.
- Waivers should be in writing – one will suffice in file



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Overtime Pay

- Must be paid 1-1/2 times regular rate of pay
 - For work over 8 hours in a day
 - For any work over 40 hours in a workweek
 - For the first 8 hours worked on the 7th day worked in a workweek
- Must be paid 2 times regular rate of pay
 - For work in excess of 12 hours in a day
 - After 8 hours on the seventh workday in a workweek



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Piece Rate Compensation

- AB 1513 requires employers to pay piece rate workers for rest and recovery periods at no less than the greater of (a) the applicable minimum wage, or (b) the average hourly wage for all time worked by employee during the work week.
- “Safe Harbor” provision to allow time for employers to comply by December 15, 2016



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Piece Rate Compensation (Cont.)

- Requires employers to pay piece rate workers for “nonproductive” work time at no less than minimum wage
 - Little guidance as to what constitutes “productive” and “nonproductive” time
- Wage statements need additional line items for (1) rest and recovery pay and (2) for nonproductive work time pay
- An option! Eliminate Piece Rate



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Pay Stub Rules

- Must include 10+ separate items
 - ▣ Dates of pay period
 - ▣ Employee name/last 4 SSN
 - ▣ Name/address of employer
 - ▣ All hourly rates and hours worked
 - ▣ Paid Sick Leave balance
- Beware of penalties*



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#5: HAVE A ZERO TOLERANCE POLICY ON HARASSMENT

Average court verdict for a sexual harassment plaintiff is \$350,000.

Average cost an employer faces to defend a sexual harassment suit is \$150,000 per plaintiff.



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Preventing Harassment

- Professionalism and Respect in the Workplace
- Harassment Awareness Training
- Harassment Can occur anytime/anywhere
- Understand the various types of harassment



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Examples . . .

- ❑ **Physical** - Touching, Pushing, Personal Space Violation, Hazing, Assault
- ❑ **Verbal** - Jokes, Vulgar Language, Kissing Noises
- ❑ **Visual** - Posters, cards, calendars, gift cards, eating seductively
- ❑ **Audio** - Ring tone on a cell phone with inappropriate sound or tune
- ❑ Male to Male, Female to Female, Male to Female, etc.



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#4: USE AND UPDATE YOUR EMPLOYEE HANDBOOK

HANDBOOK BENEFITS

- Evidence of at-will employment
- Explanation of Policies
- Set expectations for employees
- Uniformity/Consistency
- Defense to harassment allegations
- SO many reasons to have one.....




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#3: INSURE YOUR BUSINESS


- **Workers' Compensation**
 - ▣ Know your carrier
- **Employment Practices Liability**
 - ▣ Protection against claims made by employees, former employees, potential employees
 - ▣ Discrimination, harassment, wrongful termination, wage & hour claims


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#2: USE EFFECTIVE DISCIPLINE AND DOCUMENTATION

- Progressive Discipline
- Coaching and Communication
- Documentation
 - State the problem
 - State the consequences
 - List ways to help them succeed
 - Get their signature


The worst thing you can do for someone is something they can do for themselves.
- John Wooden



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Make Work Decisions Based on Work Factors

- Know all of the protected classes
- Make employment decisions based on work related factors such as:
 - work performance
 - attendance issues
 - safety violations
 - violation of company policy, etc.

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Protected Classes

Race	Gender/Gender Identity	Religion	Marital Status
Politics	Age	Disability	National Origin/Ancestry
Veteran	Sex/Sexual Orientation	Color	Pregnancy

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#1: FIRE FAST WITH NO SURPRISES


Average pay range of someone who has been wrongfully terminated is between \$35,000 - \$40,000/year.

The average verdict against former employers is over \$300,000.

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ENDING THE RELATIONSHIP

- When it's time to end a relationship, have your paperwork in order
- Make the process quick and fair
- No surprises



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REQUIRED TERMINATION FORMS

- Form DE 2320 EDD Form Your Benefit Unemployment Insurance Pamphlet (www.edd.ca.gov)
- Notice to Health Insurance Premium Payment HIPP
- Notice to Employee as to Change in Relationship
- Continuation of Coverage Under COBRA and Certificate of Group Health Coverage HIPPA*
- COBRA Continuation Coverage Election Notice*
- Acknowledgement of the Receipt of COBRA Rights*
- Certificate of Group Health Plan Coverage*

**Required at time of termination for some employers*



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Here to Support Employers!

**If you liked what you heard today,
there's more where
that came from.
Ask about our Membership Plans!**

**Thank you for completing your
evaluations!**



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Questions???



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