

Employer's Legal Advisory

Spring 2004

Are You Violating the Labor Code? What could happen . . .

Recently a lawsuit was filed in Ventura County alleging that the employer was in violation of certain sections of the Labor Code. This suit appears to have been filed as a result of the California Private Attorneys General Act (otherwise known as the "Bounty Hunter" law). That law (effective in January 2004) allows employees to file lawsuits against their employers based on violations of the Labor Code. Previously, the employee had to make a claim with the Labor Commissioner and that agency would determine whether to take action against the employer. Importantly, the law provides that the employee who brings the action is entitled to 25% of any penalties assessed against the employer. Additionally, the employer can be liable for the attorneys' fees of the employee.

There are numerous requirements for employers found in the Labor Code. Allegations made in the Ventura County case and other common violations that may be raised by employees include the following:

Failure to file the employment application with the Labor Commissioner's office.

A California employer that has a written application to be completed by applicants must file a copy of that application with the Labor Commissioner's office. While this requirement has been a part of the Labor Code for many years, the Labor Commissioner has not regularly enforced this provision.

Failure to post required notices.

The current lawsuit claims that the poster required by the Whistleblower Protection Act, which was to be posted as of January 2004 was not posted until February 2004. The plaintiff-employee also claims that the appropriate IWC Order was not posted as required. The Labor Code specifically requires that the IWC Order is to be posted in the building in which the employees are employed. Thus, many employers may need to post multiple copies. The complaint alleges a failure to post the required workers' compensation notice as well. Numerous other posters are required by other federal and state statutes.

Failure to meet requirements for meal and rest periods.

The language regarding the appropriate number, length of time and scheduling of meal breaks and rest periods for employees is virtually identical in all of the IWC Orders, with a few exceptions. Generally, an employee must be given a meal period of at least 30 minutes, after not more than five hours

worked. (In certain instances the meal period can be waived by mutual consent.) Employees must be authorized and permitted to take a rest break every four hours, or major fraction thereof (defined as more than two hours). A failure to provide appropriate meal and rest breaks is a violation of the Labor Code and the employer must pay each employee an additional hour of pay for any day in which the appropriate meal or rest period is not provided.

Failure to pay overtime as a result of misclassification of employees as exempt.

Even though the Department of Labor has recently announced changes in the definition of who qualifies as an exempt employee under federal law, California employers must comply with the generally stricter standards of California law. This includes a requirement that the employee is "primarily engaged in" such duties (or closely-related duties) – defined as more than 50% of the time.

Requiring an employee or applicant to agree, in writing, to any term or condition known to be prohibited by law.

The Ventura County complaint alleges that the employer required employees to sign an arbitration agreement in which the employee is responsible for 50% of the arbitration costs, which the plaintiff alleges is illegal under California law. However, the general language of this Labor Code provision could result in numerous other allegations against employers.

Failure to pay wages at the appropriate time.

California law has very stringent requirements on when and how employees are to be paid, including payment of an employee immediately at the time of termination if the employer discharges the employee or an employee quits with 72 hours' notice. Terminated employees must be given all wages due, including accrued vacation pay.



Jeanne Flaherty is an attorney and President of Employer's Legal Advisor, Inc., which represents and advises employers on all employment matters. The firm specializes in conducting employment practices compliance reviews and advising employers on day-to-day legal issues in the workplace.

For assistance in determining whether your company is in compliance with the provisions of the California Labor Code contact Ms. Flaherty at 805/499-2918.