

DID *you* KNOW?

HUMAN RESOURCES BULLETIN FROM AKIN & ASSOCIATES • APRIL 2016

New Protections for California Whistleblowers

Currently, labor and employment laws prohibit employers from discriminating, retaliating, or taking adverse action against California employees or job applicants for filing claims with the Labor Commissioner, or from engaging in other protected behaviors relating to the enforcement of legal rights under California Labor Code.

AB1509, which took effect on January 1, 2016, makes it illegal for a California employer to retaliate against a worker if he or she is a family member of someone who has, or is perceived to have, engaged in protected conduct under applicable provisions of California Labor Code.



Kin Care Leave Amendments



All California employers must allow employees to have 40 hours/year of unpaid absence for school activities (maximum 8 hours/month). Employers are prohibited from discharging or otherwise discriminating against an employee who is a “parent” of one or more children of the age to attend kindergarten or grades 1 to 12, inclusive, or a licensed child care provider for taking off up to 40 hours each year to engage in child-related activities such as enrollment, emergencies, school functions, etc.



LEGAL WATCHOUTS:

Top 10 FLSA Mistakes that Lead to Class Actions



10. Providing Compensatory time off in lieu of overtime

Private employers in California may provide compensatory time off to non-exempt employees in lieu of overtime compensation according to very strict and specific regulations. These regulations make it impractical for employers to utilize comp time as an alternative to overtime in most instances.

Employers should also keep in mind that if an employer classifies an employee as exempt, but grants compensatory time off to them when they work in excess of eight hours in a day or 40 hours in a week, it may compromise the exempt status of such employees. Compensatory time off is generally not recommended for either non-exempt or exempt employees.

9. Deducting from Exempt Employee Pay

There are very specific rules on when deductions can be made to exempt employee's pay. Violations may result in having to reclassify the employee as non-exempt (and may include back pay and penalties).

8. Paying Incorrectly for Non-Exempt Travel Time

Regular commuting from home to work is not compensable. Out of town travel, whether for a day or an extended period of time, must be paid, with some limited exceptions.

7. Misclassifying Independent Contractors

Recently, there has been more government emphasis given to the financial impact of the relationship (e.g. I.C. can suffer a loss like any business) rather than the employer control of the I.C.

6. Expense Reimbursement Mistakes

CA requires reimbursement of actual expenses. Per Diem does not suffice and may need to be included in overtime rate.

5. Focusing only on the FLSA or CA Law

Do not overlook that you must comply with federal AND state law, whichever one provides more protection to employees.

4. Not Paying Overtime on Incentive Pay

All commissions must be included in the employee's regular rate of pay for the purpose of calculating overtime. (Note: This applies to calculating sick time rate, as well)

3. Not Tracking Hours Actually Worked

Time records must reflect actual hours worked, not just the employee's work schedule. Beware of employees who arrive early to work or stay late. This is compensable time. If the employee is violating the employer's working hours, it is a performance issue, but the employee must be paid for these hours.

2. Rounding

Familiarize yourself with rounding rules in California.

1. Misclassifying Employees as Exempt

A job is exempt, not the person. There are strict government guidelines that assist employers in determining the exemption status of a job. Although the job may qualify on some of the requirements, the majority of the tasks must qualify as exempt duties. When in doubt, classify the job as non-exempt.

Wage Theft Protection Act Employee Notice

The Wage Theft Protection Act requires that all employers provide each non-exempt employee with a written notice containing specified information at the time of hire. This notice must be updated as the information changes. Find the Wage Theft Protection Act Notice at www.dir.ca.gov



Akin & Associates is a provider of human resources and employment-related services and as such the information, opinions, and materials provided are of this nature and not intended to replace the advice of an attorney.



Akin & Associates
760.432.0774
cathy@akinassoc.com

P.O. Box 462731
Escondido, CA 92046
www.akinassoc.com

Systemic Discrimination 101:

How you can you avoid a charge of systemic discrimination.



The EEOC has increased its attention to employers' systemic discrimination. Systemic discrimination is patterns of behavior, policies or practices that are part of the structures of an organization, and which create or perpetuate disadvantage for a protected class. Often a single discrimination claim leads to a systemic discrimination charge. Employers should audit the results of all of their practices, change policies as needed and correct any violations voluntarily and proactively.

Reviewing Performance Reviews

Want more employee buy-in with their performance review? Try being transparent about the process.

Provide the following information to every employee:

- What is the procedure?
- What criteria are used?
- How often are reviews done?
- Who will conduct the evaluations?
- What is training process for evaluators?

