



## WHY AN HR AUDIT REVIEW IS VALUABLE AND WILL SAVE YOUR BUSINESS MONEY IN 2009

### A. New California Laws

1. No Text Messaging while driving
2. Exempt Computer Professionals
3. New Form for Worker Compensation
4. Employer prohibited from requiring employee to sign waiver of wage claims that employer knows is false and employees prohibited from signing false time cards.

### B. New Federal Laws

1. ADA Definition of Disability Expanded – Broader Protections
2. FMLA Workplace Leave Expanded for Family Members of Military Personnel
3. Genetic Information Non-Discrimination Act effective 11-21-09
4. Emergency Stimulus Plan Requires Medical Insurance /Mental and Physical illness
5. Bike Commuting Benefit Requirement
6. New I-9 Form Required as of 2-2-2009.

### C. Changes in California Laws

1. *Edwards v. Arthur Anderson* – No Solicitation Clauses are unenforceable against Employees. Unfair Restraint of Trade.
2. *Jones v. The Lodge at Torrey Pines Partnership* – FEHA does not impose personal liability for retaliation and discrimination, even though managers and supervisors can be held liable for harassment.
3. *Lonicki v. Sutter Health Central* – Under CFRA – California Rights Leave Act and employee's inability to do assigned task because of serious health condition does not mean that employee cannot perform other jobs while out on leave.
4. *McDonald v. Antelope Valley Community College District* – One year statute of limitations to file FEHA claim is tolled while employee pursues internal administrative remedies with defendant.
5. *Ross v. Ragingwire Telecommunications* – Employers are not obligated to accommodate medical marijuana use on or off the job.



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6. *Nadaf-Rabrov v. Neiman Marcus Group* – FEHA requires employer to engage in an expansive interactive process to accommodate an employee’s disability, including extending leave until such time as an anticipated vacant position opens for employee.

#### D. Changes in Federal Laws

1. *Gomez-Perez v. Potter* - Age Discrimination Laws (ADEA) protects employees from retaliation.
2. *Meachum v. Knolls Atomic Power Laboratory* – In disparate impact cases, ADEA requires that employers prove that non-age factor was relied upon for termination of employment.

#### RECOMMENDED COMPLIANCE LIST UPDATE FOR EMPLOYEE HANDBOOK

1. Update FMLA Policy to add new military leave. (Qualified employees must work not less than 1250 hours in a year to receive 12 weeks unpaid leave.)
2. Update Electronic Communications Policy to add “no text messaging while driving”, “No Twitter allowed” and “No Right to Privacy” in any communications using Company equipment or systems. Inform the employees that the Company “monitors” its communications systems and that it conducts periodic searches and that employees have no reasonable expectation of privacy.
3. Update Medical Confidentiality Policy to comply with new Genetic Information Non-Discrimination Act which takes effect on 11-21-09, which provides that employers with 15 or more employees are prohibited from discriminating against employees on the basis of genetic information.
4. Review definitions of “Exempt Employees” especially for “Computer Software Engineer” and “Administrative” categories.
5. Review all Employee Agreements for any invalid and unenforceable non-compete or non-solicitation clauses.
6. Increase Trade Secret protection by identifying categories of “Confidential Information.” Take steps to protect Confidential Information.
7. Review Mental Health Benefits with Insurer.
8. Review Policy regarding Meal Breaks and Rest Periods. Company has a duty to make sure that all employees take this time off or Company will have to pay labor claims.
9. Update Policy about prohibition against signing false time cards.



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10. Update Pregnancy Disability Leave Policy (PDLA is effective the first day of work and can be used in conjunction with FMLA/CFRA to allow qualified individual to take up to 7 months off unpaid time).

### PURPOSES OF A SELF AUDIT

The fastest growing type of litigation in California is Employment law claims. The largest type of claim is made for Wage and Hour violations with the Labor Board. This incorporates violations for mischaracterizing "Exempt" and "nonexempt" employees. Almost 90% of employers do not pay wages correctly.

Compliance issues concern time records and practices, meal and rest breaks, improper deductions, immigration practices, employee handbook policies which are not properly updated.

### COMMON PROBLEMS WITH EMPLOYEE HANDBOOK

1. Insufficient Notice about "At-Will" employment
2. Incomplete Equal Opportunity or ADA or Anti-Discrimination language required by law.
3. Inadequate No Drug or Alcohol Policy
4. Not properly updated for new law or to reflect state of the law
5. A "Use it" or "Lose it" Vacation Policy which is illegal in California
6. Vacation Policy with improper vesting schedule
7. Incorrect Family Medical Leave statements
8. No arbitration provisions
9. Inadequate language about No Right to Privacy in Communications
10. Sexual Harassment Policy is insufficient/Does not comply with required training of managers

### EMPLOYMENT AGREEMENTS

Employers have the legal right to require new employees to sign mandatory dispute resolution arbitration provisions in employee agreements. Those provisions must be fair and reasonable, and cannot force the employee to pay the arbitration costs and fee. Employers may also have such provisions in the Employee Handbook. In addition, Employers may limit a period of employment claims to 6 months or a year, cutting off civil statutes of limitations, but not labor board claims.

### EXEMPTION STATUS OF EMPLOYEES – OVERTIME PAY

The Labor Code was modified to exempt from overtime pay those computer software professionals working full-time who earned not less than \$75,000 a year or \$6,250 a month. The employee must be primarily engaged in work that is intellectual or creative, and the hourly rate cannot be less than \$36 an hour.