

The Source

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Time to Post your OSHA's 300 Forms

Employers Resource provides clients with copies of the OSHA 300 and OSHA 300A logs. The Summary is required by California law to be posted in a conspicuous location from **February 1st until April 30th** of each year. After April 30th, the log and the summary must be kept on file for a period of five years following the year to which it pertains.

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The OSHA 300 form is used to classify and record details about work-related injuries and illnesses. This form also notes the extent and severity of each case. The Summary, form 300A shows the totals for the year in each category.

The potential penalty for not posting your summary is **\$1000.00**, so make sure you've received your copy and have posted the summary!

If you have misplaced your copy or have any questions on these forms, please contact our Claims Management Department at (800) 559-2350 ext. 336.

Did you know...

We offer our clients the opportunity to be endorsed on Employers Resource's Employment Practices Liability Insurance (EPLI) policy at a reduced rate?

EPLI protects companies against claims filed by employees against your company, employees of your company, its directors or it's officers.

Common employment practices violations include discrimination (based on sex, age, race, religion or other factors); sexual harassment (including "quid pro quo" harassment claims); wrongful termination; and a variety of other employment-related claims that violate employees' civil rights or their ability to perform their jobs in an acceptable and fair working environment.

These types of claims can be extremely expensive to defend against, even if the court finds in favor of the employer. Please contact Employers Resource if you are interested in obtaining a quote.



Compliance Spotlight



Shabby Treatment at Termination Leads to Lawsuits

The way you treat the people you terminate can make the difference between an ex-employee who is upset but moving on, and an ex-employee who is angry and calling an attorney.

The *Human Resource Executive*, cited several tales that highlight what disgruntled employees might do:

- One made a false accusation of harassment that took months to unravel.
- Another flipped off a switch that the remaining employees didn't know about, thus disabling the corporate computer system and causing IT experts to spend 2 weeks chasing down what they thought was a computer virus.
- A third implanted a virus into his company's computer system that was timed to take effect 2 weeks after the employee departed.

And the list goes on, file deletions, theft of proprietary information, etc. Evidence suggests that many of these egregious acts would not ever have taken place if the people involved had just been treated with respect during their terminations. A recent article in *Corporate Counsel* points to another avenue of employee reprisal—damaging claims of whistleblowing retaliation and/or wrongful discharge. In the article, attorneys Russell Hayman and Jon Dean note that lawsuits which are in reality simple claims of wrongful discharge take on an aura of respectability when attached to a charge of whistleblowing or other retaliation.

We offer the following suggestions for avoiding such claims:

- **Treat outgoing employees with dignity and respect at all times.** It's not hard to do and it will pay off handsomely. Once you have made the decision to terminate there is no reason to humiliate or brow beat employees on the way out.
- **Have an internal company policy in place on how to handle terminations.** You want departing employees treated according to a set, consistently applied process
- **Conduct an effective and extensive exit interview.** Interview all departing employees, whether the separations are voluntary or involuntary. Have two people perform the interview if possible, so there are two witnesses to the interview.
- **If allegations of wrongdoing surface, take them seriously.** Inform management, and conduct an investigation. Demonstrate that the company takes all such concerns seriously and is committed to compliance.
- **Document all actions you take in responding to compliance concerns.** If you don't act after you are on notice of a problem, your actions will become "willful" violations.
- **Take corrective action if allegations prove to be true, or be prepared to show that the allegations are false.** This minimizes your exposure to later claims of retaliation. Your careful attention to investigating mitigates any claim that the employer was "motivated" to terminate the employee.

You Can't Single Out the Bad Eggs

Many employers believe that they can identify the most likely-to-sue employees, and so they take preventive actions with respect to those particular employees only. That's a mistake. Most suspicions won't be accurate, because it's hard to predict who will sue and who will not. And secondly, consistency is important, so it's best to treat all employees the same.

Surge in Wage and Hour Claims

Consider these factors when reviewing non-exempt employees:

Time worked - Are all hours worked recorded properly? Make sure that employees are recording start times, time out for meals, time in from meals, and time out at the end of the day. Review your procedures for maintaining time records.

Breaks and lunch - Are meal and break periods carefully observed and recorded? Recording Meal Periods is a requirement by the Fair DLSE, Department of Labor Standards Enforcement Agency

Overtime - Is overtime being recorded and properly paid? Remember that overtime is calculated using the "regular rate" of pay, which includes nondiscretionary bonuses.

Benefits - Are you properly accruing vacation? Vacation accrual can be capped, but not forfeited. Accrued vacation or paid time off (PTO) is considered wages.

Final Payment - Are you observing all final payment rules? California is very strict with regard to deductions from final wages. Please check with the HR department if you have questions regarding allowable deductions from the final payment.

Below are some proactive steps employers can take to improve and/or ensure compliance with wage and hour laws. These steps include:

- Appointing a compliance manager, usually the HR manager
- Adopting a system for auditing violations and showing overtime payments
- Establishing a system for employees to report violations
- Training associates on proper timekeeping
- Educating managers on the law, especially the need for nonexempt employees to record time in and time out
- Making managers "own" the problem. Institute serious consequences for managers if their groups are not properly recording time, such as a demotion or a cut in pay
- Revising and/or updating handbooks and policies
- Having e-mail reminders about timekeeping compliance
- Requiring non-exempt employees to sign a statement on their time sheets verifying that they have worked only the hours recorded

We recommend employers conduct internal annual audits to ensure they are meeting all non-exempt requirements.

Complying with AB 1825 – Required Harassment Training for Employers with 50 or more employees

If your company has 50 or more employees, the state of California requires employers to provide two hours of harassment training to all new Managers and Supervisors within their first 6 months of employment and every two years thereafter. Employers Resource has multiple training options available. If you are interested in scheduling harassment training, please contact the Human Resource Department at: (800) 559-2350 Ext: 330.

Ideas to Control Intermittent FMLA



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FMLA allows workers to take up to 12 weeks of unpaid (but benefits continued) leave each year of their employment to care for their own or a family member's serious health condition or to bond with a new child. Employers have complained about certain aspects of the law for years.

A key complaint has involved FMLA's intermittent leave provision, which permits workers to take just a few hours or even a few minutes off, often without prior notice. "The law is used by people with attendance problems," says Michael Eastman of the U.S. Chamber of Commerce. "You have an employee with chronic tardiness ... who says it's for a health condition."

Others have pointed out that claimed health problems are especially prevalent on Mondays and Fridays. And a survey by HR publisher B21 showed that 47% of employers surveyed felt unjustified intermittent leave posed at least "somewhat of a problem" for their operations.

Now the Department of Labor is contemplating changes in the law, with a Feb. 2 deadline for comment. In the past, business leaders have asked that the law not cover illnesses of less than 10 days' duration, or that the somewhat vague definition of "serious health problem" be better spelled out, among other changes.

Meanwhile, there are several steps you can take now to curb intermittent leave abuse.

Have a doctor certify all FMLA leave for medical reasons. You're entitled to ask for a second or even a third opinion.

Use a form that asks the certifying doctor for complete information on the claimed condition, including schedule of dates and times for treatments, and minimum amount of time leave will be needed. The DOL provides a form for this purpose.

Have the employee recertify the condition every 30 days. This is at the worker's expense and has proved a strong deterrent to bogus leave claims.

Ask for a new certification for the claimed condition for each 12-month period.

Insist that the employee work with you in setting up a schedule that includes as many treatments as possible in off-work hours.

Transfer the employee to a position where absences are less disruptive. The law permits this, as long as pay and benefits remain equivalent to the previous job.

Look for obvious abuse patterns, such as the "Monday/Friday syndrome." You are entitled to ask for recertification of a claimed medical problem if "the employer receives information that casts doubt on the stated reason for the leave," say the regulations. A Monday/Friday absence pattern is considered evidence to cast that doubt, and you can bring it to the certifying doctor's attention.

Contact the Human Resource Department at (800) 559-2350 Ext:330 for guidance.