VOLUME 2 ISSUE 6

The Source

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Inside This Issue

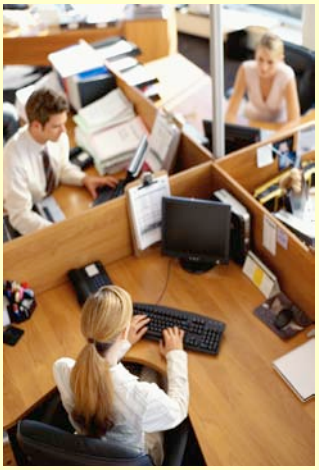
Helping Employees save for Retirement

A majority of large US employers, like Employers Resource, automatically enroll workers into their 401(k) plans, the nation's predominant vehicle for employees to save for retirement, according to a survey by Towers and Watson, a consultancy group.

Since the financial crisis hit in September 2008, 18 percent of the companies surveyed have reduced or suspended matching contributions to their 401(k) plans. The survey found that among the employers being surveyed, 49 percent had yet to restore the match, although virtually all indicated that they are considering reinstating all or portion of the match within the next 12 months.

Of companies that reinstated the match, the vast majority restored it to its previous level. Most large US companies now use automatic enrollment to promote participation in their plans. The survey found that:

- 57 percent of large companies automatically enroll employees into their 401(k) plans, with 39 percent automatically enrolling new employees and 18 percent automatically enrolling all employees.
- Relatively few employees declined to participate after they were automatically enrolled. 85 percent of the companies surveyed reported less than 10 percent of employees opted out of the 401(k) plans after they had been automatically enrolled.



Did you know…

Employers filing a 1099 form for services performed by independent contractors equaling $600 or more or entering into a contract for $600 or more are required to report to the EDD within 20 days via the DE542 form. This information is used to assist state and county agencies in locating parents who are delinquent in their child support obligations.

Compliance Spotlight
Paid Time Off

Employers are not legally mandated to provide paid vacations, holidays, or personal days to their employees, but If they do, they should establish a written policy that clearly spells out the details. Paid Time Off (PTO) is simply a way of lumping together various types of leave, granting employees a given number of paid days off each year to use for their own purposes.

Vacation is defined as any paid time off earned as a benefit. A “personal holiday” (sometimes referred to as a "floating holiday") that is not associated with any specific event, such as a birthday or holiday, is also treated as vacation.

Vacation is a Form of Wages

Paid vacation leave is a form of wages. Each day an employee works, he/she earns a portion of the total of the annual amount of vacation leave. For example, if an employee receives two weeks of vacation per year (80 hours), the employee accrues approximately 1.53 hours of vacation every week.

Vacation Policy is Considered a Contract

Because paid vacation leave is a form of wages, it creates a contract between you and your employees. Employees perform specific duties in exchange for both the wages and the vacation earned.

Use-It-or-Lose-It Policies are not permitted

Once an employee has earned paid vacation time, it should be treated as if it were money in the bank and it can never be taken away. The California courts and the state Labor Code prohibit a “use-it-or-lose-it” policy, in which employees lose earned vacation time that is not used by a specific date.

Under a reasonable cap plan, once an employee reaches a certain level of earned vacation, the employee can no longer earn additional vacation until some of the existing vacation is used. Once some vacation is used, vacation again begins to be earned at the usual rate. You do not have to retroactively give the employee the amount of vacation he/she would have earned during the time the vacation was at the cap.

The cap should be reasonable and based on factors such as:

- The amount of vacation offered
- The opportunity for employees to take vacation during the year
- The type of business or industry involved

Employees must be given a reasonable amount of time to take the vacation, and the "reasonableness" will depend upon the amount of time an employee accrues, as well as the employee's ability to use the vacation. For example, if an employee earns five weeks of vacation per year and cannot take vacation because of work schedules or lack of manager approval, the use of a cap on accrual would not be appropriate because the employee did not have a "reasonable" amount of time to take accrued vacation.

Please contact Human Resources at EXT: 330 if you would like assistance in establishing a Paid Time Off program.

California Supreme Court Rules: Non-Competition Agreements are unenforceable

The California Supreme Court confirmed that non-competition agreements are unenforceable in California. Agreements that restrict an employee's ability to pursue similar employment after leaving a job are prohibited, even if narrowly written and leave a substantial portion of the available employment market open to the employee. Unless a non-competition agreement clearly falls under one of the following exceptions, it will be unenforceable in California:

- Sale of a business, which can legally restrict a seller's ability to compete with the buyer in the geographic location where the seller had carried on his or her business.
- Dissolution of a partnership, which can legally define a geographic area within which one of the partners cannot conduct a similar business.

The Court reiterated the law in California that non-competition agreements are against public policy because they restrict an individual's ability to earn a living.

California has a long-standing prohibition on noncompetition agreements, meaning that employers cannot stop their employees from competing with them--not for a year, not within a limited geographic area, and, it seems, not even when it comes to trade secrets. Agreements that try to enforce noncompetition or non-solicitation clauses are, with few exceptions, facially void under California Business and Professions Code section 16600, and their use can constitute unfair competition pursuant to section 17200.

In one of the most recent cases on the subject, a California appellate court found void a noncompetition agreement that prohibited employees of a biotech company from going to work for a competitor. In its opinion, the court not only struck down the biotech company's non-compete agreement, it called into question whether any agreement can prohibit employees from using trade secret information unless doing so is unlawful regardless of any independent contractual prohibition.

In summary, the ruling is that noncompetition agreements are "facially void" in California under almost all circumstances, and even clauses that prohibit employees from using "trade secret" information when going to work for competitors are likely not valid.

Prompt Workers Compensation Claim Reporting Directly Affects your Bottom Line

The easiest way to keep your claim costs as low as possible is through proactive claims management. According to an NCCI study on lag time, injuries reported during:

- Week two after the date of the accident cost an average of 18 percent more than those reported during week one
- Weeks three and four average a 30 percent greater cost
- After four weeks, costs increase by 45 percent

The injuries most susceptible to lag-time cost increases were back injuries; they averaged 35 percent higher costs when reported after the first week. Therefore, the first step to controlling your claim cost is as easy as reporting your claim quickly. For more information, contact your claims department at EXT: 336.

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Are Text Message Searches Legal?

The US Supreme court ruled unanimously on June 17th that the City of Ontario, California's search of police sergeant Jeff Quon's text messages to his colleagues and to a woman with whom he was having an affair was reasonable, and therefore Quon's constitutional privacy rights were not violated, reversing a decision of the 9th U.S. Circuit Court of Appeals.

The city distributed two-way pagers to employees, including its SWAT team. A lieutenant told SWAT personnel that text messages sent using the pagers were considered the same as e-mail and that all city-owned equipment was limited to business-related use. However, the lieutenant said that his employees could pay the overage charges if they exceeded a preset limit of characters each month and that he would not audit the messages to see if they were work related.

The police chief subsequently ordered an internal investigation to find out if overages were occurring because the character limit needed to be increased to allow employees to send more work related text messages. Investigators found that many of SWAT team member Quon's messages were personal and sexually explicit.

Quon sued, alleging privacy and unreasonable search violations. The district court rejected the claims when a jury found that the audit was ordered to determine efficacy of use, not to look for misconduct. The 9th Circuit reversed, finding that Quon relied on his lieutenant's informal policy and that the search was unreasonable.

Writing for the high court in City of Ontaario v Quon, Justice Anthony Kennedy set forth the standard for determining reasonableness of such a workplace search: "When conducted for a non-investigatory, work-related purpose or for the investigation of work related misconduct a government employer's warrantless search is reasonable if it is justified at its inception and if the measures adopted are reasonably related to the objectives of the search are not excessively intrusive in light of the circumstances giving rise to the search."

Final Pay Quiz

- How much time do employers have to issue a final paycheck to an employee who gives the company less than 72 hours notice that they are quitting? **72 Hours**
- Your company decides to terminate an employee who works from home. After hearing the news, the employee says he will stop by the office the next day to pick up his final check. Is it ok to wait until the next day to cut his final paycheck? **No**
- You hire an employee for a three week job. On the last day of his assignment are you required to have the final check ready? **Yes**
- You terminate an employee with no notice but because you use a payroll service you decide to wait until the next payday and use direct deposit for her final pay. Is this legal in California? **No, the final paycheck must be prepared and issued on the same day**