

The Source

Volume 2 Issue 7

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Time to Post OSHA 300A Forms

It's time to post your Occupational Safety and Health Administration (OSHA) 300A Form, which is the summary of job-related injuries and illnesses that occurred in 2010. Employers are required to post their individualized OSHA 300A form annually from February 1st to April 30th of every year.

The OSHA 300A summary lists the total number of job-related injuries and illnesses which occurred in 2010 that were logged on your company's OSHA log. These forms were mailed to all clients at the end of January. The reason for the requirement is so that workers may be made aware of the number of workplace injuries that occurred the previous year.

The OSHA Form 300A must be displayed in a prominent area of the workplace so that all employees have convenient access to its contents. Please make sure that copies are made available to employees who may not see the posted summary because they may not report to a fixed location on a regular basis. Companies that have reported no injuries for the previous year are not exempt from posting 300A. All OSHA 300 logs must be maintained at each site for the past 5 full years.

Please contact the claims department at (800) 559-2350 extension 336 with any questions may have.

Did you know...



The law, AB 2774, was written by DOSH (the Division of Occupational Safety and Health) to make it easier for serious safety violations to survive an appeal. After federal OSHA complained that Cal/OSHA had too few violations classified as serious, and noted that most fines had been reduced, DOSH enacted AB 2774.

Starting now, if an employer has an injury in its workplace, or even allegations of a serious hazard, both DOSH and the Appeals Board have clearer rules to make their case. The new rules are designed to make it easier to establish that a violation was serious in the appeals process; the new rules also provide for defenses to those violations. We recommend our clients review their IIPP's and ensure they are practicing the safety policies contained therein. If you would like to discuss your safety program please contact our Safety Department.

Auditing your Wage and Hour Practices



A self audit is simply an internal review of your pay practices. It generally should include the following areas:

- Employee classification (exempt vs. nonexempt)
- Meal and rest periods
- Timekeeping and pay practices
- Calculation of the "regular rate of pay" and related overtime issues
- "Off-the-clock" work
- Child labor practices
- Classification of workers as "independent contractors"

The purpose of an audit is to identify policies, procedures and practices that violate the law. Given the complexity of the laws involved, audits invariably reveal some compliance issues. By taking a proactive approach, employers retain control over correcting the issues identified by an audit and are better prepared to defend themselves if the government or a plaintiff's attorney comes calling.

Begin by determining the scope of the audit. What areas will you cover (overtime compliance, exempt versus nonexempt classifications, meal and rest breaks, etc.)? Will you evaluate the entire organization or only certain departments or job classifications? An analysis of the risk areas in the organization should drive these decisions. For instance, do you know whether many employees skip their rest breaks and meal periods? If so, that should be a key focus area for the audit.

Written policies and other materials are important audit documents. However, the goal of any audit should be to analyze actual operations. Targeted document reviews (payroll records, applicable policies, job descriptions, card punch reports, etc.) play an important role in the data-gathering phase of the audit.

When developing audit tools, it is important to strategize about the ultimate goals of the audit. For example, if you suspect misclassification of employees as exempt and simply want to identify the magnitude of the problem, you may want to interview managers instead of individual employees about the duties of the positions at issue.

Many of us resist self-analysis, especially when we fear it may reveal flaws or problem areas. The same is true for organizations. Fixing problems identified during an audit can be expensive and require operational changes. So, it is important to ensure the right people are committed to the audit from the outset. It can be risky to conduct an audit before there is a consensus about what to do if problem areas are identified.

At this point, you are ready to start the audit. Be methodical and thorough. Follow the plan you developed initially, but be prepared for detours. Also, be sure those individuals involved in organizing the audit understand the need for confidentiality and do not inappropriately reveal information gathered during the audit process. When the audit is complete, summarize the findings. To minimize potential liability, it's important to ensure the audit results are made available only to those limited individuals in the organization with a "need to know,".

The final step in an audit is deciding what needs to be fixed, if anything. Of course, self-corrective measures can be operationally, financially and emotionally difficult. However, failure to correct known violations will subject an organization to greater liability.

Committing your organization to a wage-hour self-audit is an important decision. Performing the audit and implementing self-corrective measures based on the results can be painstaking and expensive. In the long run, though, such efforts can deliver big returns.

Un-Paid Interns – The Rules of the Game

Employers should proceed carefully when deciding to use unpaid interns as the Department of Labor Standards Enforcement has clear guidelines:

A person hired as an unpaid “intern” must be a student enrolled in an accredited academic program receiving academic credit for the internship or be in a program approved by a public agency to provide training. Otherwise, an employer must pay at least minimum wage for all hours worked.

Many employers want to establish their own internship programs to help high school and college students or non-students who may be new to the employer’s business or industry. These types of internships, however, do not qualify as exempt under the state’s minimum wage and overtime laws, and the interns in these programs must be paid for all hours worked in accordance with the wage-and-hour requirements applicable to all employers.

DLSE Guidelines Explained

The state Division of Labor Standards Enforcement (DLSE), which enforces wage-and-hour laws in California, has developed the following guidelines for student intern programs. In order to be classified as an unpaid internship, the program or training must meet the following criteria:

- The training must be part of an established course of an accredited school or of an institution approved by a public agency to provide training for licensure, or to qualify for a skilled vocation or profession;
- The program may not be for the benefit of any one employer;
- A regular employee may not be displaced by the intern or trainee; and
- The training must be supervised by the school or a disinterested agency.

Any training program or internship that does not satisfy the above criteria must pay the intern or trainee minimum wage and overtime, as applicable.

If a student is receiving “on-the-job training” to become a regular employee, the student is considered to be an employee of the employer, and not an unpaid intern. Before hiring an intern or creating an internship program, an employer should check to see if the proposed internship complies with the DLSE requirements. Please contact our Human Resources Department if you would like more information.

The State Labor Commissioner requires that all of the following tests be met before anyone can be exempt from minimum wage and overtime laws:

- The training, although it may include actual operation of your facilities, is similar to that which would be given in a vocational school;
- The training is for the benefit of the student.
- The student does not displace regular employees, but works under their close supervision;
- The employer derives no immediate advantage from the activities of the student and, on occasion, the employer’s operations may actually be impeded;
- The student is not necessarily entitled to a job at the conclusion of the training period;
- The employer and the student understand that the student is not entitled to wages for the time spent in training;
- Any clinical training is part of an educational curriculum;
- The student does not receive employee benefits.
- The training is general, so as to qualify the student for work in any similar business;
- On completion of the program the student is not fully trained to work only for the employer offering the training;
- The screening process for the program is not the same for employment, but involves only criteria relevant for admission to the educational program; and
- Advertisements for the program state clearly that it is for training or education rather than employment.



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I Can't Believe My Boss Just Said That!

At some point most of us have probably found ourselves in trouble for something we have said. Experience has taught most of us the hard way to think before we speak.

Then there are those managers and supervisors, who no matter how many times they embarrass themselves or those around them with off-color comments, or how many of their jokes result in awkward silence, they just can't seem to understand that there thoughts should be put through some type of diplomacy filter. Needless to say inappropriate, or discriminatory comments can place a company in hot water.

If you have had one of these people as your boss, your workday was probably subject to some interesting commentary. Here workers with loose lipped bosses share some of their zingers:

- "Years ago, I was a commissioned salesperson. My boss said to me, "It's really hard on my ego that your making so much money"
- "At my first job out of college, I was at an advertising agency. The day I was laid off, my boss took me out for a drink, which I thought was normal at the time, and then told me he would like me to have his kids. I thought that was a bit outside of my job description."
- "My worst ever was, 'Your not worth \$8 per hour"
- "My first boss, during a particularly stressful meeting, where I was being blamed for work that was way above my pay grade and experience, said to me while handing me a box of tissues, 'You know this job is very stressful. I went into therapy last year because of it and it really helped me.'
- "I just hired another person for the store. She's an older woman like you, you know, post menopausal!"
- "My boss can be a handful. He has said many inappropriate things to me, but here is one I have never forgotten: 'You are not married and you do not have any children. There is no excuse for you not to work overtime. I expect you to be in here every Saturday working' to which I replied, 'Great, I'll put on a couple of pots of coffee for everyone since none of the men in my department are married or have children either!'

Discrimination and retaliation claims are on the rise. Contact the Human Resource department if you are interested in management training.