

# The Source

Volume 2 Issue 9

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## Client Referral Program

How would you like to make \$250 just for referring a company that could use our help?

Our company's success is directly related to the level of service and satisfaction we offer our clients. A large percentage of our business comes through word of mouth referrals and we would like to show our appreciation by giving back to our clients. The Client Referral Program is open to all clients. For each referral you can earn \$250 cash. It's our way of thanking you for trusting us.

Do you have someone you would like to refer, or would like further details on the plan? Contact our sales department for more information at 800-559-2350.

## Did you know...

Employers Resource is offering our exclusively negotiated rates for your pre-employment medical examinations? Do you want to improve your hiring practices? You may require an employee to undergo a physical examination, at your expense, before beginning employment but only after a conditional job offer is made.

Medical examinations must be job related and consistent with business necessities. Employers must require that all candidates being examined are subject to the same examination.

If you are interested in learning more or implementing a program, please contact our Claims Manager at (800) 559-2350 ext. 336.



## Compliance Spotlight

### Compliance Spotlight



#### Mileage Reimbursement Rate

The Internal Revenue Service (IRS) mileage reimbursement rate is currently 55.5 cents per mile. Employers should be reimbursing employees using their personal vehicles for all mileage incurred during the course of conducting their jobs outside of normal commutes to and from work.

#### Importance of Policy Against Harassment

The 8<sup>th</sup> Circuit Court of Appeals recently affirmed that an employer's anti-harassment policy was more than reasonable, allowing them to successfully defend a claim of sexual harassment. Because the company followed a well written policy that was distributed, the court concluded that they were not liable when an employee did not use the policy. Employers Resource is here to help implement a solid anti-harassment program, please contact our Human Resource department for assistance.

#### Non Competition Agreements not enforceable in California

The California Supreme Court issued an important decision regarding employee non-compete agreements in California and also addressing the non-waivability of certain employee protections under the Labor Code. The Supreme Court ruled that any agreement that restrains an employee's ability to practice his or her profession is invalid under California law, unless it fits within extremely narrow exceptions. The Court also held that an employee may not waive the indemnity protections provided by the California Labor Code.

Thoughtful employers should be careful with any attempt to disguise non-compete provisions into employment agreements or offer letters since overreaching will invalidate the entire agreement. In addition, employers should remember that even if an employee signs a complete release of all claims, certain rights, such as a right to indemnity, will survive.

#### Paying Employees by Piece Rate

Paying employees piece rate is a method used by many employers to establish an incentive system based on completing a specific task or making a particular piece of goods. For example, you might pay piece rate based on the number of appointments set by an employee or the number of service calls completed.

Employers should keep in mind that all the requirements that apply to hourly employees are also applicable to piece rate employees. Employers are required to track all hours worked and employees must receive at least minimum wage for all hours worked, despite slow production hours or days. Piece rate employees are entitled to a combined rate of pay of their hourly pay and their piece rate premium pay with regard to overtime hours. Contact Employers Resource if you have questions about establishing a piece rate compensation program.

#### Potential Penalties for Not Providing Meal Periods and Rest Breaks

Class action lawsuits are filed every day, even against small employers, for violating California's meal and rest break rules. The financial penalties can potentially put a company out of business. Even large employers such as Wal-Mart were recently fined \$57,000,000 in compensatory damages and \$115,000,000 in punitive damages.

As an employer, you must provide non-exempt (hourly) employees a meal break of at least one half-hour for every work period of more than five hours and rest breaks of no less than 10 minutes for each four hours worked. If an employee is not provided with a meal break or not authorized and permitted a required break, they must be paid one additional hour at their regular rate of pay.

Meal Periods and breaks can be challenging to track, but it is vital that you have a comprehensive and rigorous program to ensure that non-exempt employees are taking their required breaks. Please contact us if you need assistance enforcing a compliant policy.

## An Overview of Garnishments

With continuously evolving employment laws across the United States, an area that does not typically receive a great deal of attention from employers is garnishments and garnishment laws.

Garnishments are sent from various agencies such as state or federal courts, the IRS, state tax agencies, creditors who have filed a formal judgment or a student loan administration company. In recent years, case law has brought on employer's responsibility in processing garnishments and their liability if they are not processed correctly or in a timely manner. When this happens, creditors look to the employer, not the employee, to satisfy the entire amount of the garnishment and there is no cap on the total amount of the garnishment.

Many garnishments require an answer or response to the requesting agency within 7-14 days; therefore, when you are served with a garnishment, it is important that you review and forward it to Employers Resource immediately for processing.

When a garnishment is being deducted from the employee's paycheck, many employees claim they do not know the creditor and did not know there would be a garnishment, but agencies make several attempts to contact the individual prior to garnishing their wages. In fact, the IRS may attempt to make contact for years before they issue a garnishment. If the employee seems surprised by the garnishment, it is important for them to contact the requesting agency to try to resolve the issue.

## Final Pay Check Quiz

How well do you know the rules regarding an employee's final paycheck?

1. An employee walks into your office and says "I quit". You now have 24 hours to prepare his final check.  
True    False
2. Your company decides to terminate an employee who works from home. After hearing the news the employee says they will stop by the office the next day to pick up their final check. You can wait until the next day to cut the final check.  
True    False
3. You hire an employee for a three-week job. On the last day of the assignment, you must have the final paycheck ready to hand to the employee.  
True    False
4. You terminate an employee who works in the field. Upon hearing that she is terminated she goes home and emails you a note to mail her final check to her home address. You are permitted to mail this check.  
True    False

## Top 10 Mistakes in Documentation



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You've heard the mantra from HR, "Document, Document, Document", but what and how should you document? Sometimes it's easier to understand how *not* to do something. The following are the top 10 mistakes made in documentation. Are you guilty of any of them?

1. **Unsigned or undated documents.** This is most common failure in documentation. Sign and date everything! Ask employees to do the same.
2. **Illegibility.** In court, neatness counts! If your handwriting is not perfectly legible, type your notes.
3. **Late documentation.** Judges and juries look suspiciously at disciplinary or other reports written weeks or months after the incident they describe.
4. **Inaccuracy.** That document looks perfect, but the facts are wrong. Even one error makes the entire document suspect.
5. **Unsupported conclusions.** Don't write, "Worker X was drunk" without documenting the reasons you think so, for example "liquor on breath, slurred speech." Statements by objective witnesses will support your conclusion even more.
6. **Ambiguity.** If Mike isn't making 200 widgets per hour, don't just write, "Mike's performance must improve." The judge will ask, "Improve from what to what?" Be specific.
7. **Don't make excuses.** Statements such as "You failed, but I know we've all been pushing hard lately," may win you a nice guy award, but it won't win your case.
8. **Don't lie ... even to be nice!** Saying someone was let go due to a layoff rather than for cause, if there was cause, can backfire in a wrongful termination suit. No good deed goes unpunished!

### Final Pay Check Quiz Answer Key...from page 3

1. False – Employers have 72 calendar hours to issue the final paycheck to an employee who gives less than 72 hours notice that they are resigning.
2. False – Employers must have the final paycheck, including any accrued vacation or PTO, available on the same business day as the termination.
3. True – Final pay is due on an employee's final day of work.
4. True – Although you must still have the final paycheck prepared at the time of termination, if an employee requests – in writing – that you may mail the check; it is okay to do so. It is never acceptable to mail the check without employee authorization. It is recommended that the check be mailed with some form of delivery verification.