

The Strategic **EMPLOYER**

Employment Law & Human Resources Consulting Services



Daily Overtime Pay Restored, with Many Other Changes on the Way

To many observers, the anticipated onslaught of workplace legislation has begun. Recently, the restoration of daily overtime pay occurred (see story on page 2), which many business people believe makes the state appear inhospitable to business.

Much of what we predicted in our February 1999 *The Strategic EMPLOYER* has made significant movement through the Legislature. With just a few months to go in the current state and federal legislative sessions, the pro-labor/union agenda is in full-swing.

Some of the state proposals have surfaced in the past, but either never made it out of the Legislature or were vetoed. But this term, labor unions are aggressively supporting many of the measures, with strong allies among the Democrat-controlled legislature. Here's a look at just some of what is pending as we go to press:

FAMILY LEAVE MEASURES: S.B. 118 would expand family leave rules to allow time off to care for a grandparent, sibling or domestic partner who has a serious health condition. Current law only allows family leave to care for an employee's child, parent or spouse.

Adding to the burden of smaller businesses is S.B. 1149, which would extend family leave coverage to employers with as few as 20 employees, instead of the current threshold of 50.

INSPECTION OF PERSONNEL FILES: S.B. 172 would amend the current rules permitting employees to inspect their personnel files by: Allowing employees to request corrections and deletions of certain material Requiring employers to respond to a worker's request within 21 days Extending the inspection right to public workers.

ARBITRATION: A.B. 858 would prohibit you from requiring employees to agree as a condition of employment to submit disputes to arbitration. The bill would impose a \$5,000 fine for violations. This would change the current concept that employers have nothing to lose by requiring arbitration agreements that

may or may not be enforceable. For background information, see also "Alternative Dispute Resolution: Mandatory Arbitration—Uncertain Times," *The Strategic EMPLOYER*, February 1999.

CIVIL RIGHTS: A.B. 1670 would expand sexual harassment laws to cover independent contractors. It would also require more accommodations for pregnant employees than under current law; extend mental disability rules to cover employers with five or more employees (current threshold is 15 employees); and bar genetic testing.

LEGISLATION DEADLINES: Certain key cut-off dates are approaching for proposed state bills to become law. The last day legislators can take action on any measure is *September 15, 1999*. Governor Davis then has *30 days* to approve or veto the bill. Legislation that is unsigned becomes law. Most approved bills would take effect on *January 1, 2000*, except for urgency legislation, which would become effective immediately after being signed by the governor.

PROPOSED FEDERAL LEGISLATION: Unlike state proposals which sometimes pass through Sacramento relatively quickly, federal measures can get bogged down in lengthy committee hearings. As a result, it can take many months to several years for agreements to be reached on complex legislative proposals. Most of the bills that are critical to employers are still in committee, so it could be some time before they are considered by the full House or Senate.



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More Than Just a Rollback

Daily Overtime Pay Restored

Despite opposition by state business groups, the regression to Daily Overtime easily cleared both houses of the California legislature on July 8, 1999, as Governor Gray Davis vows to sign it into law, effective January 1, 2000. The bill, promoted by organized labor, will restore overtime pay for employees who work more than eight hours a day.

COMPROMISE LEGISLATION: In a compromise gesture, the legislation would also provide flexibility, including allowing a workweek of four 10-hour days without overtime pay, but only in the case where two-thirds of the affected employees vote for such a schedule, and after many specific requirements are met.

OCCUPATIONS COVERED: The bill would cover a plethora of occupations, including department store clerks, gas station attendants, dental receptionists, ticket takers, body shop mechanics and waiters. It would not affect managers, professionals, union members, public employees or agricultural workers.

DAILY OVERTIME BACKGROUND: The measure, AB 60, was the centerpiece of organized labor's legislative agenda this year. Davis helped negotiate the final compromise with business and labor representatives. Under the proposal, covered workers must be paid time and a half for work of more than eight hours in a day and double time for more than twelve hours a day.

Two years ago under Governor Wilson, the state Industrial Welfare Commission abolished an 88-year-old California requirement that employees in some industries be paid daily overtime. Instead, the Commission ordered overtime pay only for work extending beyond 40 hours a week, the standard used by the federal government and the overwhelming majority of other states.

Previously, Wilson had argued that paying daily overtime placed too heavy a burden on employers, who were emerging from the long California

recession. He also contended that new lifestyles and the rapidly changing workplace indicated a preference for the new flexibility for workers and employers alike.

But organized labor assailed the board's changes as a major reversal for nonunion employees, particularly temporary hires who often must work more than eight hours a day but less than 40 hours a week. Most union contracts specify overtime pay rates for work in excess of eight hours a day.

Union leaders said that after the Wilson administration abolished the daily overtime requirement, some employers attempted at the bargaining table to eliminate daily overtime pay in their labor contracts. Their rationale was that if competitors didn't have to pay daily overtime anymore, they didn't want to either.

MAJOR IMPACT PREDICTED: Although the bill contains several provisions aimed at pacifying business, the California Manufacturers Association, a major employer organization, remained adamantly opposed and voiced disappointment that the bill will become law.

Some California business leaders predicted the bill would reduce the amount of overtime at a broad range of nonunion employers, from California's booming home builders to ski resorts to home health care providers.

Additional provisions in the bill do more than just roll back the law to bring back daily overtime. Labor experts at the California Chamber of Commerce predict that the shift would worsen rush-hour traffic as more workers left at the same time, as well as trigger higher home prices as builders passed on increased labor costs to consumers.

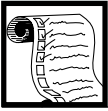
DAILY OVERTIME PROVISIONS: Major provisions of the overtime legislation would:

- 1. Require employees to be paid time and a half for working more than eight hours in a day and double-time for working more than 12 hours.

- 2. Allow employees who now work flexible shifts, such as four 10-hour days, to voluntarily continue to do so without overtime pay. Certain requirements to assure that this is "voluntary" will need to be met.
- 3. Permit workers, with the employer's consent, to take time off for personal obligations and make up the time during the same week without being paid overtime. A maximum of four hours per week of such "make-up" time would be allowed. A major issue for employers will be the ability to prove, if necessary, that this particular flexibility was requested by the employee, and not forcibly imposed by the employer.
- 4. Allow certain businesses, such as the ski industry, to continue to require employees to work more than eight hours a day without overtime until July 1, 2000. The Industrial Welfare Commission then will decide whether these employees—who work long seasonal hours—should be included in the eight-hour requirement.
- 5. Allow employees to petition employers to institute alternative, flexible work schedules that would not require overtime. Again, specific requirements would need to be met in order to do this.

WHAT TO DO NOW? Until the law goes into effect on January 1, 2000, there are a few transitional steps that employers may want to consider:

- 1. Review current work schedules and patterns to determine if the operation would benefit from a 4x10 work schedule or if a standard 5x8 can be maintained; or if a 5x8, how much overtime is likely?
- 2. Assess staffing needs in view of workload and likely overtime.
- 3. Determine impact of likely overtime on anticipated pay raises.
- 4. Update written personnel policies.



Litigation Avoidance

Problem Prevention Services by WAAG AND CO.

Waag and Co. is an Employment Law and Human Resources Consulting Services firm, working exclusively with employers. Our services focus on these general areas:

- Problem Prevention and Litigation Avoidance
- Personnel Policy Manuals
- Hiring, Discipline, Discharge
- Compensation and Benefits
- Management and Employee Training
- Training of In-House Trainers
- Harassment and other Employee Problem Investigations
- Human Resources Audits
- Strategic Planning
- Due Diligence for Mergers and Acquisitions
- Protecting Trade Secrets
- Workplace Law Compliance
- Wage and Hour Law
- Employment Contracts
- Drug Testing Policies
- Employer Representation before the DFEH, EDD, DLSE, NLRB, EEOC, and other government agencies

Employment laws and regulations change at a dizzying pace, and employment litigation is flourishing. Involvement in disputes is time-consuming, expensive, and a drain on a business's productivity and resources. Ironically, many such disputes could have been avoided through the adoption of relatively inexpensive programs, policies, and diligent human resources management techniques. Although no technique can eliminate the risk of litigation, all employers can benefit from an analysis of their exposure to employment litigation and the adoption of prevention-oriented policies, practices and employee training. The following is a brief list of just some of the unique problem prevention services available from Waag and Co.

- EMPLOYMENT CONTRACTS:** Employment and arbitration agreements are not just for key individuals, but also for persons at all levels of pay and responsibility. Employment contracts that define the

rights of employers, employees, and independent contractors help reduce or eliminate employment disputes, and limit liability.

- SUPERVISOR AND EMPLOYEE TRAINING:** Quite often, litigation arises or a case is lost as a result of a front-line manager saying or doing the wrong thing, even if well intended. Waag and Co. provides training for managers and employees, or we can work with your in-house staff.
- INTERNAL INVESTIGATIONS:** State law and recent federal court decisions require that allegations of certain types of misconduct be immediately and appropriately investigated before any action can be taken. This would include allegations of harassment, discrimination, theft, and other wrongdoing. It is important that such an investigation be conducted by someone who understands the legal issues and can conduct an impartial investigation. Waag and Co. has substantial experience in this area, and can assist you with your investigation, or conduct an investigation for you.
- PERSONNEL POLICY MANUALS** are among the most effective tools available

to an employer to promote good employee relations and prevent and defend lawsuits. However, such manuals are not one-size-fits-all, but instead must be custom tailored to meet the business and legal needs of your workplace. We work closely with you to develop a set of policies that meet the needs of your business in a manner that will be understood by your employees.

- EMPLOYMENT RELATIONS AUDITS** range from brief reviews of critical employment documents to intensive on-site examination of the full spectrum of the employment relationship and legal compliance. Special focus audits can be provided to closely examine one or more specific issues, such as anti-discrimination laws, wage and hour regulations, union avoidance, sexual harassment, etc.

- FORMS AND GUIDELINES** are available to Waag and Co. clients to deal with both standard and difficult employment relations issues. They are kept current to comply with state and federal employment laws, cover a variety of topics and can be customized for your company's special needs.



~ FIRM RESUME ~

Susan S. Waag, Esq.

Waag and Co. was established to provide employers with practical, strategic guidance in personnel matters, backed up by strong legal expertise. Since our start in April 1998, Waag and Co. has worked with over 90 different employers with great success. These include employers engaged in manufacturing, media, high tech, public sector, health care, government contracting, transportation, construction, banking, and service industries. Susan

Waag has substantial experience as an employment law attorney and human resources consultant. Since 1985, she has devoted her career to working exclusively with employers. This includes several years as in-house employment counsel to a Fortune 500 Company, and as a partner at the San Luis Obispo County law firm of Sinsheimer, Schiebelhut & Baggett. Susan also serves as the 1999 President of the Central Coast Personnel Association. In the last seven years, she has provided expert consultation to approximately 25 of the 75 largest employers in San Luis Obispo County.





Answers to frequently asked employer questions

New ADA Guidelines Issued by EEOC

The federal Equal Employment Opportunity Commission ("EEOC") has released guidelines under the Americans with Disabilities Act ("ADA"). The ADA applies to all employers with 15 or more employees, and requires you to provide a reasonable accommodation to qualified workers with disabilities, unless it would cause an "undue hardship." California's similar law applies if you have five or more workers. Here are some brief highlights:

- NO FORMAL REQUEST REQUIRED:** If an employee gives any indication that a work adjustment may be needed for a medical condition, you must discuss accommodations with the employee.
- EMPLOYER CAN CHOOSE:** You're not obligated to provide the accommodation the employee wants. You can choose a simpler or less expensive one if it's equally effective.
- REQUESTING DOCUMENTATION:** When the extent of an employee's disability or accommodation needed is not obvious, you can ask for medical documentation. You may request information only about

the disability's impact and possible accommodations—not about the person's medical history.

- FAMILY LEAVE AND THE ADA:** You must consider an eligible employee's rights under both the ADA and the Family and Medical Leave Act separately. A worker who needs 13 weeks of leave due to a disability would be entitled to 12 weeks of family leave, plus one week as an accommodation—unless the extra week causes an undue hardship.
- REASSIGNMENT TO A VACANT POSITION:** You must consider this when no accommodations permit performance of the current job. Although you only need to place the worker in a job they are qualified to perform, you can't require them to compete for the opening or be the best qualified applicant.
- CHANGING PERSONNEL POLICIES:** You may need to bend your policies as an accommodation. If a diabetic employee needs to eat while working, you may have to allow it even if your policies prohibit food at workstations.
- WHAT YOU DO NOT HAVE TO DO:**

Among accommodations *not* required are: Eliminating an essential job function; Lowering production standards; Providing personal use items (eyeglasses, wheelchairs, hearing aids); Excusing violation of a uniformly-applied rule of conduct.

- UNDUE HARDSHIP:** Accommodations that cause undue hardship are not required. Consider the accommodation's impact on your business, your overall financial resources and the size and nature of your organization.
- UNION AGREEMENTS:** Just because an accommodation would violate a union contract does not mean it is an "undue hardship." If no other accommodation is available, you must negotiate with the union to create a contract exception. But this might not be required if it would severely burden other workers.

FOR MORE INFORMATION: For a free copy of the EEOC guide, "Reasonable Accommodation and Undue Hardship Under the ADA"—call (800) 669-3362 or see www.eeoc.gov/docs/accommodation.html

~Waag and Co.~

About Consulting Service Contracts

For select clients we provide HR Consulting and Employment Law Services on a contract basis. These contracts are flexible in duration, hours and services delivered. Susan Waag has experience providing services to Fortune 500 companies, as well as hundreds of central coast businesses. We will work as part of a team with your management and staff to meet your goals. Exact terms of the contract are designed to meet your specific needs. Services are delivered based on these 4 steps:

- 1. Needs Analysis
- 2. Frequency (hours per week, month or year)
- 3. Reduced Billing Rate
- 4. Waag and Co. will respond to your Request for Proposal and Referrals



~Court Decisions~



- EMPLOYEE HANDBOOK CREATES CONTRACT EMPLOYER CAN'T UNILATERALLY ALTER:** Handbook provisions creating a seniority-based layoff system became part of the employment contract and could *not* be altered unilaterally by the employer, the Arizona Supreme Court has ruled. Seniority had been the employer's policy for years, until just days before a layoff. The court explained that an implied-in-fact contract can be found in a handbook when "a reasonable person could conclude that both parties intended that the employer's (or the employee's) right to terminate the employment relationship at-will had been limited." The court held that an employer can't just change this without legally adequate notice—something more than mere receipt of a new handbook. An employee must also affirmatively agree to the change.
- U.S. SUPREME COURT RAISES HURDLE FOR JOB BIAS PUNITIVE DAMAGES:** A U.S. Supreme Court ruling in a sex-bias case has made it harder for employees to win punitive damages under federal anti-discrimination laws. The Court agreed with the employee that punitive damages are available when the employer acts with "reckless indifference" to a worker's rights, as opposed to the "egregious conduct" standard urged by the employer. However, it also ruled that employers can avoid punitive damages when they make good faith efforts to comply with the law and a supervisor's rogue conduct is to blame for the discrimination. Of course, solid training of supervisors and overall awareness of personnel actions would prevent most problems.



Supreme Court Ruling Favors Employers

“Correctable Disabilities” Unprotected by ADA

A thorny issue of whether the Americans With Disabilities Act (“ADA”) protects workers whose disabilities don’t necessarily affect them at work due to medication or corrective devices.

Now, the U.S. Supreme Court has *overturned* the EEOC’s long-held position, ruling that workers whose impairments can be mitigated usually won’t be considered disabled under the law. In the new cases, the employees had a variety of physical conditions that caused them to be denied employment for safety-related reasons.

NEARSIGHTED PILOTS DENIED JOBS:

Nearsighted twin sisters brought the first case after United Airlines rejected them for “global” pilot positions because they didn’t meet the airline’s requirement of uncorrected vision of 20/100 or better for these jobs. Their vision with glasses or contact lenses was 20/20 or better.

The other cases involved employees who were fired for failing to meet federal Department of Transportation (DOT) requirements—a truck driver who was legally blind in one eye and a mechanic with high blood pressure. The driver learned to adjust his depth and peripheral perception to see properly, and the mechanic, who was also required to operate commercial vehicles, took medication that controlled his hypertension.

CONSIDER CORRECTIVE MEASURES: The workers claimed their employers’ physical requirements violated the ADA by discriminating against them based on their disabilities. But the employers responded that the workers didn’t meet the job qualifications and couldn’t sue under the ADA because they were generally able to function normally with corrective measures, and therefore weren’t “disabled” under the law.

The U.S. Supreme Court agreed with the employers. To be “disabled” under the ADA, the individual must not only have an impairment, the person must also be “substantially limited in a major life activity”—not just potentially or hypothetically limited (i.e., it is merely

hypothetical to wonder “what if the person doesn’t take his medication...?”). To assess limitations without regard for mitigations would gut the requirement that the particular person’s impairment actually be substantially limiting.

LEGAL OBSTACLES FOR WORKERS:

Employees who feel they have been discriminated against will have to overcome two big legal hurdles to be protected by the ADA. First, workers will need to prove they are personally “substantially limited in a major life activity” by their impairments even when using corrective measures—e.g., being unable to work in a broad class of jobs rather than in just one particular job. And second, they will have to prove they are still qualified to work, with an accommodation if necessary.

The Court noted, for example, that the nearsighted sisters weren’t disabled. They could fill other positions that used their skills, such as “regional” pilots or pilot instructors—even though they couldn’t work as global pilots due to the higher vision standards required for that one position.

NEW LIMIT ON “REGARDED AS” CLAIMS: Using a similar analysis, the Court also made it tougher for workers to argue that an employer “regarded” them as disabled, and therefore violated the ADA. To prevail, an employee will have to show an employer mistakenly believed the person’s impairment substantially limited a major life activity, such as the ability to work in an entire class of jobs rather than the one job at issue.

THE BOTTOM LINE: The Court’s rulings strongly favor employers and should dramatically decrease the number of workers who can claim ADA protection. Whole categories of workers traditionally considered ADA-covered are no longer automatically protected—such as the hearing impaired who use hearing aids or epileptics who control their condition with medication. They must now show they have substantially limiting conditions even with the corrective measures, yet can do the job

with or without an accommodation.

The Court also affirmed that you have a right to set reasonable hiring standards, as United Airlines did. You can decide that some physical characteristics (that don’t reach the level of an ADA impairment) such as specific strength or agility capabilities, are preferable to others. You also can say that certain medical conditions that are limiting but not so serious as to be covered by the ADA—like a bad back in some cases—are undesirable. It is important to note that specification of physical attributes might run afoul of other anti-bias laws, and that such determinations must be based on careful, individualized analyses.

CALIFORNIA’S DISABILITY LAW MAY CONFLICT WITH RULING: California has its own disability discrimination law, and state courts may or may not follow the U.S. Supreme Court’s approach.

WHAT DOES THIS MEAN? Under either federal or state law, certain important points will help avoid legal problems:

- 1. DO NOT GENERALIZE:** The new rulings do not mean that all correctable conditions are unprotected. Certain technicalities in how the cases were brought and the nature of the limitations claimed contributed to these results. Each case must be viewed individually.
- 2. CAREFUL ANALYSIS:** Legitimate occupational requirements may be set, but make sure they’re based on your specific business or health and safety needs and they are not used to unlawfully discriminate. Then analyze each case, evaluating whether reasonable accommodations would allow the person to meet your minimum requirements and perform the essential functions of the job.
- 3. QUALIFIED ADVICE:** Disability bias is still a daunting issue. Be sure to obtain qualified legal advice whenever a person’s physical or mental condition is an issue.

~Business Briefs~

CONGRESS PASSES Y2K LAWSUIT

BILL: In early July 1999, Congress passed compromise legislation to shield businesses from a flood of Y2K computer-related lawsuits, which President Clinton is expected to sign. Key provisions include: 1. Gives businesses 90 days after Y2K to fix problems before lawsuits could be filed; 2. Cap on punitive damages for small businesses; 3. Narrow sphere of class action suits; 4. Limits defendants' liability to their share of damages caused.

PATENT INSURANCE POPULARITY

GROWING: Small companies are increasingly turning to Patent Insurance to protect themselves in the high-stakes game of patent protection. Consider this: The typical California patent defense lawsuit consumes \$1.75 million! To purchase \$1 million to \$3 million in coverage for a family of patents costs an estimated \$25k to \$75k per year, estimates one insurance company.

MEDICAL COST PROJECTIONS SOAR:

HMO's previously squeezed most of the easy savings out of medical care, causing a projected 15% increase in medical costs for employers in the year 2000. With less clout than large companies, small employers and self-insureds could see even higher increases. Other reasons for new increases? Aging baby boomers, and increased drug addiction.

IRS AGREES THAT THERE MAY BE A

FREE LUNCH AFTER ALL: A federal appeals court in San Francisco ruled that in some instances, employers providing free meals to employees can deduct 100% of those expenses on their tax returns, instead of the usual 50%. The decision represents a major victory for resorts, hotels, and casinos that provide free meals to employees when there are valid business reasons for not allowing employees to leave the premises for meals. In such situations, the meal is a necessary business expense, not just a "perq."



Human Resources Mega-Trends

"Perma-Temps" Gain Momentum**"PERMA-TEMPS" FIGHT FOR BENEFITS:**

In the February 1999 issue of *The Strategic EMPLOYER*, page 12, employers were warned to be aware of the true status of "leased" and "temporary" workers. Typically, such workers receive no health insurance or other benefits, and no job security. That may be changing. Consider these recent situations:

BENEFIT AVOIDANCE: Nine current and former temp workers recently sued Atlantic Richfield Co., accusing it of misclassifying employees to avoid paying benefits during the last ten years.

TEMP GENDER DISCRIMINATION: "Contract" attorneys working for the City of Los Angeles have claimed gender discrimination. Specifically, they claim that most of the "contract" lawyers are female, while the attorneys actually hired as permanent employees are mostly male. The "contract" attorneys claim that they have been performing exactly the same work as the employee attorneys, with many of them having done so for years. They claim discrimination because the "contract" attorneys are paid less and have no benefits.

PERMA-VICTORIES: These types of disputes are increasingly finding their way into court, where the so-called "perma-temps" are racking up a succession of victories. The pressure is on in Congress and the courts to make sure these workers aren't being unfairly classified to get them out from under the protections of existing labor laws.

To date, the courts have been the first big battleground in the fight over who fits the current law's definition of an actual "employee." Even as these cases test the limits of labor law, a flurry of bills has been introduced in Congress to provide greater protection for perma-temps.

ONE EXAMPLE: Legislation was recently introduced to require that perma-temps who have been on the job six months or more get the same benefits offered regular employees, no matter who signs their paycheck.

ADA AND BENEFITS PROGRAMS HAVE DIFFERENT DEFINITIONS OF DISABILITY:

Recent court decisions have held that claiming total disability on a benefits application does not necessarily block a worker from bringing an ADA lawsuit against an employer who fires or refuses to hire or accommodate the person. So how does an employer deal with this situation?

1. In most cases, the best approach when a disabled employee asks to be reinstated is to determine whether there's a reasonable accommodation that will allow the person to do the job—even if you learn that they claimed, in an insurance or benefits application, to be unable to work.

2. Consider a fitness-for-duty test if there's doubt about the person's ability to perform the essential functions of the job. But always limit the scope of the exam and keep all medical information strictly confidential.

3. Seek qualified legal advice before taking any action.

PACIFIC BELL AGREES TO PAY \$26 MILLION TO SETTLE PREGNANCY-LEAVE SUIT:

Approximately 10,000 female employees whose pensions were short-changed by pregnancy leave will receive a boost in pension benefits as compensation. The deal should set a pattern for other companies in similar situations to come forward and settle.

WHAT'S A SEXUAL HARASSMENT CLAIM WORTH? A mediator charged with dividing up a \$10 million settlement among 120 female sales representatives for drug maker Astra USA Inc. has come up with the novel approach of placing a dollar value on different types of sexual harassment. Fondling or requests for sex by high-level managers drew \$250,000; frequent touching by low-level supervisors was worth \$150,000; and persistent verbal harassment by a mid-level manager netted claimants \$75,000. Isolated incidents of verbal harassment by low or mid-level managers paid just \$25,000.



Not Just For Sexual Harassment

EEOC Issues Harassment Guidelines

In its latest effort to clarify the complex set of rules regarding office conduct, the Equal Employment Opportunity Commission ("EEOC") recently released guidelines explaining the circumstances under which employers can be held liable for unlawful harassment by supervisors. The guidance is intended to explain the legal obligations of employers to effectively address harassment and the obligation of employees to utilize their company's complaint mechanisms prior to filing the charge of discrimination.

COURT DECISIONS: The guidelines amplify two 1998 Supreme Court decisions that held employers vicariously liable if a supervisor harasses an employee, even if the company's management wasn't aware of the incident. The Court also ruled that if the

harassment includes firing, demoting or relocating an employee, the company can be sued even if it has a comprehensive anti-harassment policy. The guidelines expand that list to include loss of promotions, adjustments in benefits or pay, and changes in work assignments, even if a person retains the same salary after the change.

NOT JUST FOR SEXUAL HARASSMENT: Employers need to understand that the new guidelines, as well as the anti-harassment principles announced in the Court's rulings, apply not only to sexual harassment, but to harassment based on any protected factor.

EEOC RECOMMENDATIONS: The EEOC also recommends that employers write, circulate and enforce a policy on sexual and other forms of harassment.

According to the guidelines, these policies should emphasize that workers who complain of harassment won't be punished and that they can complain to an authority other than their supervisor. Small businesses can explain their policies at a staff meeting rather than in writing; however, California law requires that all employees receive a written policy.

In addition, a company can argue that it isn't liable for a supervisor's actions if it can show it has a clear policy against harassment and has taken all complaints seriously. However, vicarious liability is a higher standard for defendants than simple negligence.

The guidelines can be found on the EEOC Web Site at <http://www.eeoc.gov>

Embezzlement... *Continued from back page*

also help to increase productivity by minimizing waste and uncovering honest mistakes. Effective controls include:

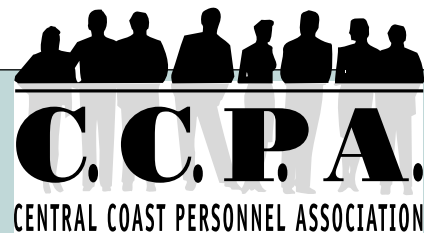
- 1. BACKGROUND CHECKS:** Conduct thorough background checks before hiring anyone, even if a staffing agency supplies the employee. Confirm all references, verify degrees and licenses and check for criminal convictions. Don't hire someone for a sensitive position if you can't get detailed, positive references from past employers.
- 2. SEPARATE JOB FUNCTIONS:** Never allow the same person to approve purchase orders, prepare billings, handle collections and perform other accounting procedures. The person authorized to write checks should not be reconciling the bank statements. Even smaller employers who don't have sufficient staff to divide up accounting functions can do this. For example, bank statements should come unopened to someone other than the bookkeeper—to the owner's home, if necessary—and canceled checks should be examined to make sure

there are no irregularities. Incoming checks should go directly to the owner, manager or someone other than the bookkeeper. They should be endorsed with the company name and account number before being sent to the bookkeeper.

- 3. BE SUSPICIOUS:** Checks should never routinely be signed by anyone without examining the supporting documentation. If you must use signature stamps, keep them locked up. Require multiple signatures on checks over a stated amount; print the requirement on the checks.

OTHER EFFECTIVE MEASURES INCLUDE: strong management presence; written authorization required for transactions; properly recording transactions; double-checking all accounts; surprise cash-counts; controlling the use of invoices and purchase orders (be sure to cross-reference them); and even requiring employees to take vacations.

For more information on ways to reduce your risk of employee embezzlement, or if you have concerns about activities within your organization, contact Susan Waag at Waag and Co.



SUSAN WAAG is the President of the Central Coast Personnel Association ("CCPA") for 1999. The CCPA functions as a Network of Personnel Professionals, as well as a Human Resources Educational Association. CCPA Professional Development Luncheons are held on the 2nd Tuesday of the month from 11:30am to 1pm at the Embassy Suites in San Luis Obispo. If you are interested in additional information on the CCPA, or would like to attend a CCPA meeting as a guest, please contact Susan Waag at (805) 783-2300.

The CCPA is forming a new north San Luis Obispo County branch, encompassing managers and HR professionals from the greater Atascadero and Paso Robles areas. Phone or e-mail Susan Waag to get on the "interested" list.



Employee Embezzlement: How It Happens and How to Prevent It

Many employers think it can't happen to them, but white collar crime costs U.S. workplaces a fortune each year.

CONSIDER THESE EXAMPLES: A former mayor admits he embezzled money from his town, causing the town to go broke. A receptionist for an Orange County Bankruptcy Court trustee pleaded guilty to embezzling more than \$160,000 by redirecting payments to an accomplice rather than to intended creditors. A California park ranger stands accused of skimming off more than \$22,000 in camping fees. *All of these situations could likely have been prevented with proper security and accounting procedures.*

No one has exact figures, but a recent study by the non-profit Association of Certified Fraud Examiners estimated the annual tab at several billion dollars and that the average business loses about 6% of its annual revenue to internal fraud and abuse.

THE LIKELY CULPRIT—AND VICTIM: An embezzler could be anyone, although most embezzlers are employed in accounting and finance departments and have direct access to either cash or

accounting records. And while you might expect otherwise, all types of employers—public and private, large and small—have been targets.

It's important to keep in mind that most often an embezzler is a well-trusted, apparently loyal employee who has a great deal of discretion in an environment with few internal controls. Would-be thieves frequently stay late to work alone and avoid detection. They often refuse to take vacations because many schemes would unravel quickly if someone else took over the job for even a few days. *Here are just some of the common tricks employees use:*

1. SKIMMING: One of the most widespread techniques involves an employee siphoning off cash before it's entered into your accounting system. One scheme, called "lapping," is where a bookkeeper steals an incoming check and doctors the receivables to show the account has been paid. As a result of computer tinkering, customers don't receive any new invoices.

2. FAKE CREDIT SLIPS: If there is a high volume of credit-card customers and a large number of returns, any sales person or cashier can run refund slips for his/her own credit card. Most retailers do not check to see if the same credit card numbers appear frequently as refunds on their credit reports, or ensure that every return has a matching sale of merchandise.

3. PHONY INVOICES: Another ploy involves an employee writing up fake vendor invoices for an entity the employee controls, and slipping them in with legitimate bills to be paid by the company. A similar scam can occur

when an employee submits fake receipts (or multiple copies of real receipts) for reimbursable expenses.

4. DEPOSITING YOUR CHECKS: An employee may receive incoming checks and deposit them into an account they opened using a variation of your company name, such as "Shell Co." to mimic Shell Oil Co. An employee with access to corporate legal documents can even open an account in the exact name of your company.

5. ALTERING CHECKS: An employee may use erasable ink to write checks. Then, once you've signed the check, they change the name of the payee.

6. FORGERY: Employees can make checks out to themselves and forge the signature. Banks frequently miss the fact that the signature on the check doesn't match the one on the bank's signature card. Even some unsigned checks have been known to clear.

TAKE COVER: Purchasing insurance against employee dishonesty may provide some protection from embezzlement losses. The cost and specifics of coverage depend on a wide variety of factors, including the amount of cash handled, number of employees and type of operation. However, it may not be easy to collect on claims. You'll have to demonstrate a fairly strong case against the culprit, and show that you're actively prosecuting the case.

THWARTING EMBEZZLEMENT: The most important step you can take to prevent embezzlement is to establish internal controls for employees who have access to cash, checks, receipts or other accounting records—and make sure they are followed. Tightened procedures may

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~Opportunities~

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