



## **EMPLOYER GUIDANCE ON USING TEENS, VOLUNTEERS & INTERNS FOR SUMMER HELP**

### **Minors in the Workplace**

Summer is almost here, and school is almost out. Therefore, it is the time for employers to brush up on the wage and hour rules that protect young workers. If you will be hiring teenagers, or if you already have minors in your workplace, make sure you know and understand the child labor laws to avoid severe penalties and keep minors safe.

### Limited Categories of Work

Generally, California and federal law prohibit teens from working in hazardous industries and jobs. Teens cannot work in these industries: meat packing, mining, logging, roofing, demolition, and pipe or brick manufacturing. Employers can also get in hot water for allowing minors to work around explosives; radioactive materials; or power equipment used for baking, meat slicing, woodworking, hoisting, or metal formation.

Minors **under age 16** can't work in industries such as building construction, public utilities, storage warehousing, public communications, transportation, and manufacturing. They're also barred from operating farm machinery; working from high scaffolds or ladders; or dealing with dangerous animals, large timber, hazardous storage areas, manure pits, or chemicals. Other jobs that are prohibited for **14- and 15-year-olds** include retail or food-service positions that involve working around boilers or engineering rooms, operating or maintaining power equipment, washing windows using ladders, loading and unloading goods, or using freezers and coolers.

## **INSIDE THIS ISSUE:**

**EMPLOYER GUIDANCE  
ON USE OF TEENS,  
VOLUNTEERS, &  
INTERNS FOR SUMMER  
HELP** 1

**RECENT RULINGS  
EMPHASIZE THE  
IMPORTANCE OF  
HARASSMENT TRAINING** 3

**SAME SEX MARRIAGE  
APPROVED BY  
CALIFORNIA SUPREME  
COURT** 4

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*(Continued on page 2)*

*(Continued from page 1)*

### Limited Hours of Work

*Between June 1 and Labor Day, 14- and 15-year-olds* can work up to eight hours a day and 40 hours a week, but only between 7:00 a.m. and 9:00 p.m. Generally, minors must be at least 14 years old to work, with some exceptions for agricultural and entertainment jobs. **16- and 17-year-olds** can work up to eight hours a day and 48 in a week, when school is out. During the summer months, they generally can work between the hours of 5:00 a.m. and 12:30 a.m.

### **Volunteers**

An individual who qualifies as a volunteer is not an “employee” and is outside the purview of the wage and hour requirements. The issue arises either when (a) an individual who has never been an employee volunteers his services, and (b) an employee of the employer volunteers his services in his off hours. So long as the individual donates their services without contemplation of payment, for humanitarian, public service or religious reasons the individual will not be considered an employee.



### Volunteer Work by Employees

Where an employment relationship exists, an individual cannot volunteer his regular work for the employer and be treated as an unpaid volunteer. An employee can volunteer his services without contemplation of payment, to perform a different type of work.

### **Interns**

An employer may offer training to its own employees and to train persons not on their payroll. The first category presents an “hours worked” issue. The second category presents an issue whether the persons will be considered employees and thus entitled to compensation. The Wage and Hour Division concludes that individuals not on the employer’s payroll will not be considered employees if all of the following criteria are met:

- The training, even though it includes operation of the employer’s facilities, must be similar to that given in a vocational school;
- The training must be for the benefit of the trainees;
- The trainees must not displace regular employees but must work under their close observation;
- The employer providing the training must derive no immediate advantage from the activities of the trainees, and occasion its operations should actually be impeded;
- The trainees must not necessarily be entitled to a job at the conclusion of the training period;
- The employer and the trainee must understand that the trainees are not entitled to wages for the time spent in training.

Per the DLSE, the following criteria should also be met to avoid an employment relationship:

- The clinical training should be part of an educational curriculum;
- The trainees should not receive employee benefits;

- The training should be general, rather than designed specifically for a job with the employer;
- Upon completion of the program, the trainees should not be fully trained to work specifically for the employer, but should require further specific training for such employment;
- The screening process for the program should not be the same as for employment and should not appear to be for that purpose; and
- Any ads for the program should be worded clearly in terms of education, rather than employment, although the employer may state that qualified graduates will be considered for employment.

### Take Away Tip

**TIP:** Employers should use caution when using minors to help in the workplace. For more details on permissible and prohibited activities of minors, please visit the firm's website, or contact Ms. Koumas.

## RECENT RULINGS EMPHASIZE IMPORTANCE OF HARASSMENT TRAINING

**T**he Ninth Circuit Court of Appeals, which covers California, affirmed a jury verdict in excess of one million dollars, in favor of a female farm worker, in a suit initiated on her behalf by the

EEOC against one of the largest integrated farming operations in the

Central San Joaquin Valley. The employee, who had picked crops for the farming operations for two decades, testified that her supervisor raped her on several occasions, threatened her life if she didn't cooperate, and subjected her to repeated verbal sexual harassment and intimidation. Subsequently, the employee alleged, she was fired after she complained to her employer.

The EEOC obtained a \$375,000 settlement from a Rochester, NY-based distributor of highway and industrial safety products, in a lawsuit alleging sexual harassment on behalf of 18 female employees, including four teenagers. The harassment included inappropriate touching, sexual advances, and vulgar sexual comments.

The EEOC also recently issued a victory for employees participating in six hundred thousand dollar plus settlement against an Anaheim restaurant to resolve a class action lawsuit charging that female workers were subjected to inappropriate touching, indecent and offensive comments, and other sexually harassing behavior by co-workers and supervisors.



### Take Away Tip

**TIP:** The foregoing adverse results should encourage employers to take prompt and effective steps to prevent sexual harassment and take effective measures to remedy harassment when it occurs. Elizabeth Koumas conducts harassment training workshops for both supervisors, as well as employees for a flat rate fee. Contact Ms. Koumas for more information about the training at (619) 398-8301 or [ejk@koumaslaw.com](mailto:ejk@koumaslaw.com).

## Same Sex Marriage Approved by California Supreme Court

**O**n Thursday, May 15, 2008, the California Supreme Court overturned the prior state ban on same sex marriage. In this 4-3 decision, the justices recognized the inherent right equality of *marry* the person of their choosing (rather than the restriction of rights that gender, in violation of the state Constitution's equal protection clause.) The law of the land after 30 days, at which time same sex marriages may begin. The deftly worded decision will raise suspicion about essentially any state law that discriminates on the basis of sexual orientation.



### Correction

In our May 2008 newsletter, an error was made in the case cited in the article on page 3 concerning pre-employment drug testing. The correct case name should be *Lanier v City of Woodburn*.

## FUTURE SEMINARS

### EMPLOYMENT LAW: FROM A TO Z

Elizabeth Koumas, along with another knowledgeable attorney, will present a day long training seminar on Employment Law, covering topics from recruiting to termination.

**Date:** June 24, 2008     **Time:** 8:30 a.m. to 4:30 p.m.     **Location:** Horton Grand Hotel, 311 Island Avenue

#### Topics Include:

- \* Human Resource Records and Documents
- \* Hiring Policies and Practices
- Overview of Family Medical Leaves
- \* Harassment Training Rules
- Performance, Discipline, Termination and Recommended Documents
- Essential Wage and Hour Practices and Benefits

### LEAVES OF ABSENCE

Elizabeth Koumas has presented this valuable seminar for the past 5 years, and continuing.

**Date:** November 13, 2008     **Time:** 8:30 a.m. to 4:30 p.m.     **Location:** TBD

#### Topics Include:

- \* CFRA
- \* Workers Compensation Leaves
- \* FMLA
- \* Disability Related Leaves
- \* PDL
- \* Other Statutory Leaves of Absence

These seminars will be presented through Lorman Educational Service. For more information, contact Elizabeth J. Koumas.

