



### WORKPLACE VIOLENCE RESULTS IN DEATH IN SAN DIEGO



**B**arona Resort and Casino (San Diego County) recently terminated Donnell Roberts. Last week, Roberts walked into the casino and killed his former supervisor with a gun just before killing himself.

While coworkers and other supervisors reported that they had seen no indications of behavioral issues by Roberts, his wife reported that he had engaged in acts of aggression that were never communicated to authorities. One example reported was that Roberts had slashed the tires of his former manager.

Even absent any violence, conflicts between employees can lead to poor productivity, an unpleasant working environment, and preventable turnover. Supervisors are the “frontline” eyes and ears of every organization and need to be equipped with skills that enable them to anticipate — and defuse — problems that can lead to serious conflicts. The foregoing incident is a stark reminder that employers need to ensure that managers are properly trained in effective conflict resolution techniques, which can mean the difference between a harmonious, efficient workplace and discord or even tragedy. Employers should internally discuss when a supervisor should handle a situation versus when HR should be called to intervene. Providing tools that help your supervisors identify and address issues relating to substance abuse and behavioral problems, as well as successful methods for confronting problem employees is key to efforts towards maintaining a safe workplace.

It is imperative supervisors and HR know the “how, when, what, and whys” of documenting workplace conflicts, and the legal pitfalls of doing nothing and hoping things will blow over.

Unless formal complaints are made and documented, employee

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background checks will not reveal prior incidents or patterns of behavior involving threats or violence. Whether noted in a personnel file or in a police or court record, information concerning past behavioral problems can help employers spot troubled prospective employees before hiring them. **DO NOT IGNORE WARNING SIGNS.**

Employers can also take legal action (e.g., restraining orders or injunctions) against current or former employees who pose a threat to safety in the workplace by exhibiting violent or threatening behavior towards other workers. For more information on legal action that be taken visit the California Courts' Self-Help website at: <http://www.courtinfo.ca.gov/selfhelp/protection/workviol.htm>

An ounce of prevention is worth a pound of cure.

**PRACTICE TIPS:**

- Provide training to supervisors on recognizing conflict and effective conflict resolution techniques;
- Recommend anger management assistance to employees exhibiting behavioral issues; and
- Promptly and accurately document all indications of behavioral issues with employees.

## NEW MILEAGE RATES ANNOUNCED FOR 2010

**T**he IRS has announced the new mileage rates for 2010. Starting January 1, the standard mileage rates for the use of a car, van, or truck will be:

- 50 cents per mile for business miles driven
- 16.5 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations

These rates represent a decrease from last year's, reflecting lower transportation costs generally.



## U.S. SUPREME COURT TO DECIDE TEXT MESSAGE CASE



**T**he court will determine: (1) whether text messages sent *by* an employee using employer-owned equipment are private and therefore entitled *to* legal protection, and (2) whether messages sent to an employee using that same company equipment are private. The case arises from an employer that fired employees after reading sexually explicit text messages sent using company phones. Please see our prior October 2008 newsletter, available on the firm's website, for the underlying facts of the case and details of that prior ruling. Upon

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learning that their employer had read their text messages, the employees sued both the city and the third-party network provider for releasing the information. The Ninth Circuit Court of Appeals ruled in favor of the employees, and the U.S. Supreme Court has now agreed to review the decision.

Although this case involves a public employer, if the court rules that the employees do in fact have a privacy interest in text messages sent on company equipment, the decision could significantly affect the policies of all employers, both public and private, regarding company equipment and communications. We will update you in a future newsletter once the court makes its decision.

## NEW FEDERAL LEAVE LAWS POISED FOR 2010



**A**re you an employer with less than 50 employees, who has been excluded from coverage under the FMLA, and all the obligations imposed by it? Well, that may change this year as a result of pending legislation. The following bills, which are making their way through the U.S. Congress, could become law this year, if approved, either individually, or collectively as part of more comprehensive legislation known as the “Balancing Act of 2009.” The “Balancing Act of 2009” (H.R. 3047) is an omnibus workplace flexibility bill, introduced in June, 2009. Its intent is to improve the lives of working families by providing family and medical need assistance, child care assistance, in-school and afterschool assistance, family care assistance, and encouraging the establishment of family-friendly workplaces. A summary of the three prospective bills are as follows:

- *The Healthy Families Act*—This bill would **require businesses with 15 or more employees** to permit every employee to earn at least one hour of paid sick time for every 30 hours worked, up to a maximum of seven days (56 hours) of paid sick leave each year. Employees would be legally permitted to use this paid sick leave to recover from routine illness or care for an ill family member, doctor's appointments and other preventative care, and for time spent seeking help and services for victims of domestic violence, stalking, or sexual assault. This law would apply to same sex spouses and domestic partners.
- *Family Leave Insurance Act*—This bill would establish a family and medical leave insurance *benefit* at state and federal levels, for 12 workweeks of qualifying leave. Covered employers would include those bound by the Family and Medical Leave Act (FMLA) *as well as small employers*, which are de-

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defined as those engaged in commerce who employ not less than 2 and not more than 19 employees. Covered employers would be required to join the program or establish voluntary insurance plans. Among other requirements, voluntary plans would have to provide equal or greater employee rights than the program, and receive the approval of the Secretary of Labor.

- *Family and Medical Leave Enhancement Act*—This bill (H.R. 824) would amend the FMLA to allow employees to take, as additional leave, [up to 4 hours during any 30-day period, and up to 24 hours during any 12-month period], parental involvement leave to participate in or attend their children's and grandchildren's educational and extracurricular activities that are sponsored by a school or community organization; and (2) relate to a program of the school or organization that is attended by the employee's child or grandchild. It would also clarify that leave may be taken for routine family medical needs including: (1) such employee's medical and dental appointments, or their spouse, child, or grandchild; and (2) the care needs of their related elderly individuals, including visits to nursing homes and group homes. It would also amend the FMLA to increase the number of employers to which it applies by **reducing from 50 to 25 employees the threshold** number triggering application of the Act.



## **NEW DLSE OPINION LETTER: DEDUCTIONS FROM EXEMPT EMPLOYEES' LEAVE ACCOUNTS**

**T**he California Division of Labor Standards Enforcement (DLSE) recently issued a new opinion letter that represents a *change in prior DLSE policy* regarding whether or not employers can deduct *partial-day absences* from exempt employees' leave banks if the absence is less than four hours.

In response to an employer's question, the DLSE said that, under California law, employers are not prohibited from deducting increments smaller than four hours from the vacation/PTO or sick leave banks of exempt employees. The DLSE commented on the California Supreme Court's 2005 decision in *Conley v. PG&E*, when the court ruled that partial day absences of four hours *or more* could be deducted from an exempt employee's vacation/PTO bank without violating California law. The DLSE's new position/interpretation relies upon the fact that the *Conley* court's decision did not expressly rule out deductions for absences of *less than* four hours.

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Nonetheless, employers should be very cautious about following this DLSE opinion letter for two reasons:

1. Although DLSE opinion letters are not binding authority, they provide insight into how the DLSE will interpret and enforce the law at issue. California courts are not bound to follow DLSE opinion letters. If there is a lawsuit, the court can take a position contrary to the DLSE since the courts are the ultimately naysayers on how to interpret the law.

2. It is important for employers to be aware- *if* the DLSE's interpretation is incorrect (*e.g.*, that exempt employees' leave banks may be charged for partial day absences of less than 4 hour increments), employers would still be liable for not following the law. The DLSE's interpretation of the *Conley* decision is based on the fact that the court did not expressly say that *only* absences of four hours or more could be deducted from vacation/PTO banks of exempt employees.

Notably, the DLSE also remarked accurately that under no circumstances may a paycheck deduction be made from an exempt employee's check for a partial-day absence, regardless of the amount of time of that absence.

## EMPLOYMENT LAW COMPLIANCE SERVICES

### Annual Audit of Employee Handbook

"When was the last time an audit was conducted of your written policies, to ensure compliance with current labor laws?"



It is critical to the success of any business operations to learn how to protect your company's interests while conveying your employees' rights and obligations in a handbook. Periodic review of your policies and practices will help ensure compliance with the ever changing labor laws. By way of example only, if you are a covered employer, do your leaves of absence policies contain the new protections for leave relating to active duty reservists (enacted in October 2008), or to care for injured military personnel (effective January 2009)? To prevent your written policies from being used against you, including but not limited to, your discipline policy creating an implied contract to discharge employees only for good cause, and granting leave of absence rights where you are not otherwise obligated to provide them, schedule an audit of your employee handbook immediately.

For more information about obtaining a **flat rate fee agreement** for this service, contact Elizabeth Koumas at (619) 398-8301 or [ejk@koumaslaw.com](mailto:ejk@koumaslaw.com).





► Several people were interested in attending this informative seminar, but due to the date and/or time, they were unable and missed it. As a result of additional interest shown in this seminar, it will be scheduled again in the new year. If you are one of the many who wanted to attend but could not due to a schedule conflict, NOW IS YOUR CHANCE. **Please email Elizabeth Koumas at [ejk@koumaslaw.com](mailto:ejk@koumaslaw.com) to express your interest. Please include preferred day(s) of the week for attending the seminar** so the firm can best meet your needs.

## FUTURE SEMINARS

### San Diego County Medical Society

**Date:** January 27, 2010 **Time:** 11:30am-1:00pm  
**Location:** 5575 Ruffin Road, Ste. 250 San Diego, CA **Topic:** Overlap of Family Medical Leave, Workers Comp, and Disability Laws

**NOTE:** *Closed to nonmembers*  
East County Personnel Association

**Date:** February 18, 2010 **Time:** 11:30am-1:00pm  
**Location:** The Brigantine Restaurant, La Mesa **Topic:** Safe Recruiting Practices  
**Cost:** Members \$30, Non-members \$35



### *Surviving the Economic Times: 50 Tips For Avoiding Employment Lawsuits*

Back due to popular demand! This in-house luncheon seminar will provide a 50-point self-audit checklist of important areas that should be reviewed at least annually by small and large employers. Periodic compliance of procedures is an essential preventative tool, especially in the current economic climate where many companies face daily challenges to remain in business. One lawsuit could decide that fate and close the doors. We will discuss practice tips for before, during and after employment, as well as 10 tips if you are sued.

**Date:** TBD **Time:** TBD **Cost:** \$35pp (includes meal)  
**Location:** The Chamber Building, 110 West C Street,  
 7th Floor Conference Room A, San Diego, CA 92102

### American Payroll Association, North San Diego Chapter

**Date:** April 15 or 22, 2010 **Time:** 6:30pm-7:30pm  
**Location:** Invitrogen, Carlsbad **Topic:** TBD  
**Cost:** \$30 (annual membership fee)

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