



HIGH GASOLINE COSTS AFFECTING THE WORKPLACE

With gas prices well exceeding \$4, more and more employees seek to alter their work schedules, in efforts to avoid the daily commute. Although employers must reimburse employees for the cost of travel relating to work, a normal commute to and from the workplace is not included in that compensable travel time. Therefore, employees are eager to minimize, or avoid, the expense of a commute, especially a long one. Employers can do their part to help employees battle the rising costs of commuting. Many employers are already offering alternative programs such as flexible workweeks or telecommuting, to alleviate the commuting expense. Other ideas include organizing carpools, distributing public transit information and subsidizing public transportation.

In general, telecommuting means working from a location remote or apart from the employee's traditional workplace. Telecommuting brings the work to the workers, rather than the workers to the work. It permits computer-savvy employees to work some or all of their standard workweek "commuting" to the company office via phone, email, and fax.

Jobs most appropriate for telecommuting are those in which employees already work independently. Employees who telecommute are protected from the inherent distractions of a busy office and can typically start their workday immediately, by avoiding what may be a timely commute. The logic behind telecommuting is that work can be performed as effectively and efficiently at home as in the office.



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Advantages of telecommuting:

- Increased productivity
- Enhanced employee morale
- Lowered absenteeism
- Reduced office space costs and other overhead
- Increased flexibility for employees with child-rearing or elder-care responsibilities
- Enhanced ability to accommodate disabled employees



Disadvantages of telecommuting:

- Challenges with performing certain jobs properly from a remote location (e.g., the employee needs access to special equipment and resources, such as servers, files, reference materials and tools)
- Diminished performance for employees with work style/temperament that lend themselves better to a more traditional working environment
- Loss of “team” culture and mentality, and possible employee feelings of isolation
- performance problems may go undetected longer
- Less opportunity for face-to-face communications with colleagues

In California, an employer must be mindful of potential overtime costs if nonexempt employees cram 40 hours into shorter workweeks (*i.e.*, four 10-hour days.) However, employers can consider alternative workweek schedules under the procedure set forth in the IWC wage orders. Telecommuting raises several wage and hour issues, including difficulty verifying actual hours worked, proper recording of time, and unauthorized overtime. To address such issues, consider using a computer or telephone system to track work time, and having a policy that imposes disciplinary consequences for working unauthorized overtime. Telecommuting may also raise travel time issues. An occasional required visit to the office may count as travel time rather than as a commute for someone who is allowed to telecommute.

Before implementing a telecommuting policy, employers should recognize the following legal issues need to be considered: the Americans with Disabilities Act, Family and Medical Leave Act, hours worked, compensable time, safety and workers’ compensation and the home office tax deduction.

Take Away Tip: For more information about various telecommuting options and assistance drafting and implementing a legally compliant telecommuting policy, contact Elizabeth Koumas at ejk@koumaslaw.com.

California Supreme Court's Backing of Same-Sex Marriage Affects The Workplace



The California Supreme Court addressed the issue whether the state's failure to designate the relationship of same-sex couples as marriage, rather than domestic partnership, violated the California Constitution. The high court ruled that it did violate the California Constitution, commenting the state must use the same term to denote state-sanctioned relationships for same-sex couples and opposite-sex couples. Opponents have collected signatures to place a constitutional amendment on the November ballot stating that "only marriage between a man and a woman is valid or recognized in California." If the state's Supreme Court decision withstands the ballot challenge, employers should be aware of the following affect it will have in the workplace:

- *Employee Benefits.* Employers must provide the same spousal benefits that are required by California law or offered pursuant to the company's policies to spouses who are the same or opposite sex. This includes, for example, leave under the California Family Rights Act, kin care for an ill spouse, health insurance, and invitations to business events. However, federal law still narrowly defines marriage as only between a woman and a man, so a same-sex spouse cannot qualify as a spouse for purposes of federal benefits. Consequently, the California Supreme Court case will not impact any benefits required under federal law (*i.e.*, COBRA, retirement plans, cafeteria plans, and flex spending.)
- *Discrimination.* Existing law prohibits discrimination based on actual (or perceived) sexual orientation. As a result of the recent case decision, it is also illegal to discriminate against an applicant or employee because his or her spouse is the same sex.
- *Domestic partnerships.* California employers need to still recognize domestic partnerships and provide benefits and privileges to domestic partners as required by existing California law (*i.e.*, CFRA rights, kin care.)

Federal Minimum Wage Increases This Month

On July 24, 2008, the *federal* minimum wage will rise to \$6.55 per hour (from \$5.85 currently), in the second of three planned increases. In July 2009, the rate will go to \$7.25 per hour. Employers must keep in mind that the state minimum wage remains higher for employees working in California, (\$8 per hour.) Some cities, such as San Francisco (currently \$9.36 per hour), require even higher minimum wage rates for some employers and employees.

Courts Disagree on Time to Sue for Waiting-Time Penalties

California appeals courts disagree how long an employee has to file a lawsuit to recover waiting-time penalties for delayed payment of wages when the underlying wages have since been paid. Earlier this year, one appellate court held that an employee has one year to sue even though a three-year statute of limitations applies to suits for unpaid wages. Now another appellate court has concluded that a three year period also applies to these kinds of waiting-time penalty only lawsuits. According to this new decision, there is nothing ambiguous about Labor Code Section 203, which states: "Suit may be filed for [waiting-time] penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise."



California Appeals Court Issues First Ruling on State's Kin Care Law

California Labor Code Section 233 (Kin Care law) allows employees to use up to half of their annual accrued sick leave to care for an ill child, parent, spouse, or domestic partner. In the first court decision interpreting this law, a California appellate court recently ruled that the statute applies to sick leave policies that provide indefinite and non-accrual-based leave. The appeals court also held that employers comply with Section 234, which addresses absence control policies, if they treat kin care leave the same as sick leave for discipline purposes.



FUTURE SEMINARS

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:

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

This seminars will be presented through Lorman Educational Service. For complete agenda, and for registration information, contact Elizabeth J. Koumas.

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