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DON'T GET BURNED BY THE WILD FIRES: EMPLOYER WAGE OBLIGATIONS DURING OFFICE CLOSURES IN OCTOBER

By Elizabeth J. Koumas

Although Federal law does not require payment of reporting time pay, the California Wage Orders require covered employers to compensate non-exempt employees for certain unworked but regularly scheduled time as a result of showing up at work. The requirements for reporting time pay are as follows:

- If an employee reports to work on a scheduled workday but is not put to work or is furnished with less than half his usual or scheduled day's work, he must be paid for the greater of (a) half his usual or scheduled day's work (up to four hours), **or** (b) two hours at his regular rate of pay. [Thus, you would have to pay an employee who is scheduled to work a 6-hour shift, at least three hours if you send them home before they complete their shift, subject to the exceptions and rules below.]
- If an employee reports to work a second time in a scheduled workday and is furnished with less than two hours of work, he must be paid for two hours at his regular rate.

The two-hour minimum is to address the situation when the employee has no usual work day, or is *not* scheduled to work on a given day, but is called in for an unspecified number of hours. It is not applicable if an employee works part-time and the scheduled workday is less than two hours by agreement.

There are **exceptions to the reporting time pay requirements** when an employer's ability or failure to provide the em-

(Continued on page 2)

INSIDE THIS ISSUE:

Wage and Hour Obligations as a Result of the Wild Fires 1

Legislation: What's In Store for 2008? 2

New Military and Veteran Leave of Absence Benefits 3

Company Pays Big For Misclassification of Employees as Independent Contractors 4

**PLEASE NOTE
NEW FIRM AND
CONTACT
INFORMATION**

(Continued from page 1)

ployee with their scheduled amount of work results from some cause *beyond the employer's control*. Instances beyond an employer's control include:

- an inability of its operations to commence or continue because of threats to employees or to property, or because of the recommendations of civil authorities;
- a failure of the sewer system or of public utilities to supply electricity, water, or gas;
- an interruption of work caused by an act of God or other cause outside of the employer's control;



- instances where an employee makes a request to leave work early for personal reasons; or
- where an employee reports to work unfit.

Therefore, if your employees came to work but were not able to work their scheduled shift the week of the fires, reporting time pay may apply depending on the reason for the closure. If you chose without recommendation or order to close the office, reporting time pay will apply.

Note, there are some other exceptions relating to employees on paid standby status

called to perform stand-by work on nonscheduled time and an employee who is sent home early or discharged as a disciplinary measure.

If an employer pays an employee reporting time pay, only the time the employee *actually worked* needs to be counted as hours worked. Any amount of compensation exceeding the compensation paid for the hours actually worked is considered payment for *other than* hours worked. This will impact the employee's regular rate of pay used for calculating overtime for that employee.

Take Away Tip

Audit Your Payroll Practice: For the week of October 22nd, employers should review whether the office was closed during the workday, and the reason for such closures, in order to determine what their obligations are with respect to compensating non-exempt employees to ensure compliance with wage and hour laws. If you have any questions about whether you have compensated your employees properly for the week of the wild fires, you can contact Elizabeth Koumas, at (619) 398-8301, or ejk@koumaslaw.com.

LEGISLATION: WHAT'S IN STORE FOR 2008?

With 2008 closing in, on October 14, 2007, Governor Schwarzenegger completed his review of pending legislation, signing some bills and vetoing many others of particular interest to employers. The following are some of the new laws which have been passed affecting employers:

- S.B. 392, which provides employees up to 10 days of unpaid leave when a military spouse is home on leave from military deployment
- S.B. 929, which *decreases* the minimum hourly wage that must be paid to exempt computer software employees, from the current \$49.77 to \$36

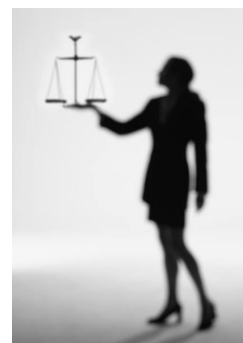
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- A.B. 812, which triples the workers' compensation premiums for employers that fail to cooperate with a workers' compensation carrier's payroll audit request

A few of the key bills, which would have impacted businesses, that were *vetoed* by the Governor include the following:

- S.B. 549, which would have permitted employees to take up to four days of bereavement leave for the death of specified family members
- S.B. 727 and A.B. 537, which would have expanded the California Family Rights Act and California's Temporary Paid Family Insurance Program to include leave to care for a sibling, parent-in-law, grandparents, grandchild, or adult independent child.
- A.B. 1707, which would have imposed a \$750 fine for an employer who fails to permit an employee or former employee to inspect personnel records
- S.B. 836, which would have added "familial status" to the list of protected characteristics under the California Fair Employment and Housing discrimination statute.
- S.B. 622, which would have imposed fines up to \$25,000 for deliberate misclassification of employees as independent contractors
- A.B. 8, which would have required employers to provide health care coverage or pay into a universal health care fund. (Although this did not pass, the governor and the Legislature are still exploring a health care solution.)



SPOUSES OF MILITARY MEMBERS ARE ENTITLED TO NEW PROTECTED LEAVE BENEFITS

By Elizabeth J. Koumas



Immediately, on October 14, 2007, section 395.10 was added to the Military and Veterans Code. As a result of this new law, businesses employing 25 or more employees are covered by this law and must permit a qualifying employee up to 10 days' unpaid protected leave.

A *qualified employee* is an employee who (1) is the spouse of a member of the Armed Forces, National

Guard, or Reserves that has been deployed during a period of military conflict; (2) works an average of 20 hours or more per week; (3) provides notice of intent to take leave within two days of receiving official notice the military member will be on leave from deployment; and (4) submits written documentation that the military spouse will be on leave during period of time the leave is requested by the employee.

"Period of military conflict"

means either a period of war declared by U.S. Congress, or a period of deployment for which a reservist is ordered to active duty pursuant to 10 USC §§ 12301-12302, or 32 USC.

This law was enacted as an urgency statute in order to serve the families of those troops currently serving in military conflicts in Iraq and Afghanistan, and to assure that these families are able to spend time together during the qualified member's leave from deployment.

COURT MAKES COMPANY PAY BIG FOR MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS

A federal judge ordered a Southern California maid and carpet cleaning services company, to pay over \$3,000,000 in back wages, plus more than \$1,000,000 in liquidated damages, to current and former law-wage domestic workers who were misclassified as independent contractors. The case arose from an investigation by the Department of Labor's wage and hour division, under the Fair Labor Standards Act. The DOL ascertained that the company had misclassified its home and carpet cleaners as independent contractors, causing minimum wage and overtime violations. Also, the company failed to maintain accurate records on the affected employees and the hours they worked.

Take Away Tip

Before Classifying Individuals as Independent Contractors: Review the control factors used to distinguish employees from contractors, the specific facts relating to the individual in question, and consult with legal counsel.

UPCOMING SEMINAR

LEARN MORE ABOUT LEAVES OF ABSENCE

Elizabeth Koumas, along with other knowledgeable attorneys, will present a day long training seminar on FMLA, CFRA, and other protected employee leaves.

Date: November 14, 2007

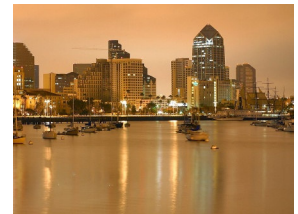
Time: 8:30 a.m. to 4:30 p.m.

Location: Horton Grand Hotel, Downtown San Diego

Topics Include:

- Federal Family And Medical Leave Act (FMLA) And California Family Rights Act (CFRA)
- California Pregnancy-Related Disability Law Length Of Leave Entitlement
- Interaction Between Family Leave Laws And Disability Laws
- Workers' Compensation
- Strategies For Handling Employee Leaves
- Other Protected Leaves, including the *new* benefits for spouses of military members.

The seminar will be presented through Lorman Educational Service. For a complete agenda, and for registration information, contact Elizabeth J. Koumas at (619) 398-8301 or ejk@koumaslaw.com.



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