2011 ANNUAL EMPLOYER SEMINAR
The Grand Event Center 4101 East Willow Street, Long Beach, CA 90815

May 11, 2011

8:00-8:45  Registration & Continental Breakfast

8:45-9:00  Welcome - Sarah Rios, President, California Unemployment Insurance Council

9:00-10:15  Social Media – What You Need To Know
            Linda Zimmer, President & CEO of MarCom Interactive
            John Anthony, Esq., Seyfarth Shaw LLP

10:15-10:30  Exhibitor Break

10:30-12:00  New 2011 CA Employment Laws and Recent Court Cases
              Richard Simmons, Esq., Sheppard, Mullin, Richter & Hampton LLP

12:00-1:00  Lunch & Exhibitor Break

1:00-2:00  California Unemployment Insurance Update!
            Key Note Speaker: Talbott Smith, EDD Deputy Director

2:00-2:15  Exhibitor Break

            Ann M. Noel, Executive and Legal Affairs Secretary, Employment Housing Commission
            Lonnie Giamela, Esq., Fisher & Phillips, LLP

3:45-4:00  Closing Comments

This program, ORG-PROGRAM-89151, has been approved for 5.5 (General) recertification credit hours toward PHR, SPHR and GPHR recertification through the HR Certification Institute. Please be sure to note the program ID number on your recertification application form. For more information about certification or recertification, please visit the HR Certification Institute website at www.hrci.org.
John T. Anthony  
Associate  
Los Angeles Office  
Seyfarth Shaw LLP  
janthony@seyfarth.com  
Telephone: (310) 201-1544  
Facsimile: (310) 551-8344

Education

Loyola Law School, (J.D., 2005)

California State University, San Bernardino,  
(B.A., 2000)

Professional

Associate, Seyfarth Shaw LLP

- Areas of emphasis include handling labor and employment related cases at all levels of both state and federal courts as well as before the National Labor Relations Board, the Department of Labor, the Equal Employment Opportunity Commission, and related state administrative agencies.

Representative Experience and Accomplishments

Mr. Anthony’s experience includes representation of management in all aspects of the employer/employee relationship, including litigation, counseling, equal employment, policy and procedure review, wage/hour auditing, employment related litigation, collective bargaining agreement negotiations, and related matters concerning employers, unions and employees.

Mr. Anthony has extensive experience litigating wrongful termination/discrimination cases, as well as wage/hour class actions. He has a broad range of industry experience, including the manufacturing and service industries, insurance, banking, retail, communications, food and agriculture, temporary employment agencies, health and beauty, hospitals, electronics, media and energy.

Academic Faculty Positions Held:

Adjunct Professor of Law, Whittier Law School

Head Coach Trial Advocacy Team, Whittier Law School

Professional and Trade Organizations and Activities

Member of the American Bar Association, 2005-present

Los Angeles County Bar Association, 2005-present

Vice President, John M. Langston Bar Association for 2011 term

Executive Board Member, John M. Langston Bar Association, 2008-present

Civic and Charitable Organizations

Certified Emergency Responder for the American Red Cross

Awards and Honors

Southern California 2011 “Rising Star”
Linda Zimmer
Professional Biography

President & CEO

Linda Zimmer is president and CEO of MarCom:Interactive, serving an international clientele of corporate, non-profit and public brands. As a digital business strategist, she has been remastering her clients’ marketing, communications and business practices with digital media for more than 25 years.

Linda is spearheading the formation of Modern Media Leadership Institute, providing training, organizational development and research services in digital business practices. She is a media source on digital media and virtual worlds topic for outlets such as *US News and World Report*, *Forbes*, *Computer Weekly*, and *Forrester Research*.

Ms. Zimmer has worked with Johnson & Johnson, the FDA, Nike, Heinz, Hyatt, Nokia, U.S. Forestry Services, Taco Bell, and is a consultant to top public relations and advertising agencies. Committed to education, she assisted National University in the U.S. with developing their School of Communications and New Media.

Linda is an award-winning speaker and writer. She presents frequently at both technology and marketing industry conferences, and as a guest lecturer at colleges and universities. She publishes extensively on the Web and writes for business, technology and marketing trade publications. She sits on the Advisory Board at Web Wise Kids and is a trainer for the State of California’s Cooperative Personnel Services.

Representative Clients:
Simon Brand Ventures • Nokia • J&J • Nike • Paramount Parks • RIAA • Disney • GE • Deloitte • Cleveland Golf • Hyatt • Heinz • The Baldwin Group • Natel Engineering • FDA • State of CA • Irvine Water District • OC Rescue Mission

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Are you using the six tools of modern business?

TALENT HAS GONE DIGITAL.

Have You?

The digitally savvy business is far more productive in reaching high quality candidates using online research and social media networking.

The facts:

- Eighty-three percent of employers now use social media to find new hires.
- Social networking reduces recruiting costs 50% or more.
- Social networks LinkedIn, Facebook and Twitter count 535 million users.
- Organizations who use social media for recruiting report response rates from 44% - 70%.
- Only 29% of companies have a social media policy in place.

Digital Practices & Management Services
- Online Enterprise & Market Strategy
- Marketing Communications
- Social Media Strategies
- Social Media Policies & Management
- Digital Implementation
- Community & Virtual Management
- Online Reputation & Brand Management
- Training and Development

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Social Media
What You Need to Know

Presentation Links

JCSI Recruitment Survey
http://jcsi.net/landing/recruitment-survey

JobVite Social Recruiting Survey
http://recruiting.jobvite.com/resources/social-recruiting-survey.php

Sodexo Careers Networks

JobVite:
http://www.jobvite.com/recruit/

LinkedIn:
http://www.linkedin.com

LinkedIn Recruiter
http://talent.linkedin.com/

Facebook:
http://www.facebook.com

BranchOut on Facebook
https://apps.facebook.com/branchout/facebook/auth/faq

Twitter:
http://www.twitter.com

Twitter Search:
http://search.twitter.com

Twitter Jobs Tools:
http://oneforty.com/search?query=jobs&commit=Search

Emp.ly
http://www.emp.ly

VisualCV
http://www.visualcv.com/

Social Search Engine
http://www.socialmention.com

World Privacy Forum
http://www.worldprivacyforum.org/

Social Media Management News
http://www.socialmanagementnews.com/

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Email: thepeople@marcominteractive.com   |   www.marcominteractive.com
Richard J. Simmons is a Partner in the law firm of Sheppard, Mullin, Richter & Hampton LLP in Los Angeles. He specializes in various labor relations matters involving state and federal wage and hour laws, wrongful discharge, employment discrimination, employee discipline and termination, employee benefits, affirmative action, union representation proceedings, and contract arbitrations. Mr. Simmons received his B.A., summa cum laude, from the University of Massachusetts, where he was a Commonwealth Scholar and graduated in the Phi Kappa Phi Honor Society. He received his J.D. from Boalt Hall School of Law at the University of California at Berkeley where he was the Editor-in-Chief of the Industrial Relations Law Journal.

Mr. Simmons has lectured nationally on wage and hour, employment discrimination, wrongful termination, and other labor relations matters. He is a member of the National Advisory Board to the Berkeley Journal of Employment and Labor Law, published by the Boalt Hall School of Law at the University of California at Berkeley. He was also appointed by the California Industrial Welfare Commission as a member of the 1987, 1984 and 1982 Minimum Wage Boards for the State of California.

Mr. Simmons is a member of the California State Bar, and has also been a member of the Western Pension and Benefits Conference, the California Society for Health Care Attorneys, the American Society for Health Care Attorneys, and the labor law and tax sections of the American and Los Angeles Bar Associations. He has also been a lecturer at graduate labor law courses presented by the University of California at Los Angeles and the University of Southern California, and has appeared as an authority on labor law on the CBS Evening News, NBC News, as well as radio and television talk shows.

Mr. Simmons has authored and co-authored numerous publications including the following:

1. **Wage and Hour Manual For California Employers**
2. **Wrongful Discharge, Staff Reduction and Employment Practices Manual**
3. **Employment Discrimination and EEO Practice Manual For California Employers**
5. **The Book of Human Resources Forms**
6. **Family and Medical Leave Manual for California Employers**
7. **Employer's Guide to the Americans With Disabilities Act**
10. Sexual Harassment Training Manual and Prevention Kit
11. California Employer's Guide To The Federal Overtime Exemptions
12. California's Paid Family Leave Law SB 1661
13. California's Anti-Business Employment Laws -- Monuments To Inefficiency
14. Wage and Hour Manual For California Hotels, Motels, and Restaurants
15. Hospital Wage-Hour Manual
20. The Employer's Guide to the Federal Family and Medical Leave Act
21. Employer Obligations Under the Federal Plant Closing Law
23. COBRA--Employer's Guide to the Federal Health Insurance Continuation and Portability Rules
24. "COBRA--The New Federal Health Insurance Law"
25. Employer's Guide to S.B. 198 Injury and Illness Prevention Programs and the California Corporate Criminal Liability Act
27. The Reform of California's Wage and Hour Laws -- An Analysis of AB 60 -- The Eight-Hour Day Restoration and Workplace Flexibility Act of 1999


38. "First Amendment Protection of Shopping Center Picketing," Industrial Relations Law Journal, Boalt Hall School of Law
EMPLOYEE HANDBOOK
AND
PERSONNEL POLICIES MANUAL
— TWELFTH EDITION —
FOR EMPLOYERS THROUGHOUT THE COUNTRY
BY RICHARD J. SIMMONS, ATTORNEY WITH SHEPPARD, MULLIN, RICHTER & HAMPTON LLP, L.A.

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• CHECKLISTS FOR POLICIES
• EMPLOYEE CLASSIFICATIONS
• PROGRESSIVE DISCIPLINE POLICIES
• VACATION POLICIES
• SEXUAL HARASSMENT POLICIES
• ABILITY TO MODIFY POLICIES
• GRIEVANCE PROCEDURES
• CONTRACT ISSUES

• EMPLOYMENT AT WILL
• PREGNANCY LEAVE POLICIES
• COBRA NOTICE
• VIOLENCE PREVENTION POLICIES
• IMMIGRATION LAW POLICIES
• FAMILY LEAVE POLICIES
• OVERTIME POLICIES
• INTERNET AND E-MAIL POLICIES
• COMPENSATORY TIME OFF RULES
• NON-FRATERNIZATION POLICIES
• SAMPLE POLICIES — OVER 400

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BOOK OF HUMAN RESOURCES FORMS
—SECOND EDITION—
BY RICHARD J. SIMMONS, ATTORNEY WITH SHEPPARD, MULLIN, RICHTER & HAMPTON LLP, L.A.
OVER 380 PAGES • ALSO AVAILABLE ON CD-ROM

Every employer and human resources representative must administer a wide variety of personnel practices at every stage of the employment relationship. In order to act consistently and legally, standardized procedures and practices are essential. As a result, a critical need exists for personnel forms that guide HR, personnel, payroll and employee relations representatives through the maze of governing rules and regulations. The need for standardized forms begins with the hiring, recruitment and application process and continues through the time an employee terminates.

In this new publication, the author has developed over 210 personnel and HR forms that will greatly simplify many personnel administration tasks. These include a vast collection of forms that guide those responsible for personnel administration through the entire employment relationship, from its inception to its conclusion, and beyond.

The sample forms and letters include job applications, offer letters, counseling forms, performance improvement plans, disciplinary action plans, layoff notices, leave of absence forms, change of status forms, and many more. This publication is an essential resource for every employer. Any one of the forms will pay for the entire cost of the publication.

The chapters of the book include forms in the following general areas:

- Pre-Hire Forms
- New-Hire & Orientation Forms
- Employee Benefit Forms
- Personnel Action and Status Forms
- Leave of Absence and Time Off Forms
- Disciplinary Action and Grievance Forms
- Payroll Practice Forms
- Education Assistance and Training Forms
- Separation and Post-Separation Forms
- Government Forms

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California employers are covered by state and federal laws that regulate family and medical leaves. These laws guarantee employees the right to take leaves to care for newborn children, adopted children, and seriously ill family members. Employees can also take leaves needed due to their own serious health conditions. New regulations took effect on January 1, 2000. In this new publication, Attorney Richard J. Simmons guides employers through the complicated web of rules created by the new laws. It examines the key features of the state and federal laws, provides sample medical certification forms and posters, as well as a drafting checklist for policies, a sample leave of absence request form, and sample leave of absence policies. Among the subjects addressed in the publication are the following:

- 2009 Regulations & Changes
- Employee Eligibility Standards
- Use Of Vacation & Sick Benefits
- Exemptions
- Sample Leave Request Form
- Sample Personnel Policies
- Military Family Leaves
- Types Of Leaves Allowed
- Reinstatement Rights
- Sample Posters & Dr. Certification
- Employer Notification Rules
- Record-Keeping Rules

CALIFORNIA’S “SUE YOUR BOSS” LAW

By Richard J. Simmons, Attorney with Sheppard, Mullin, Richter & Hampton LLP, L.A. (Second Edition • Over 140 Pages)

The law has been nicknamed the “Sue Your Boss” because of the incentives it gives employees to sue employers. It applies to all California employers and emphasizes the need for total compliance with California's unique and broad-sweeping rules. The law encourages lawsuits over minor and major violations while discouraging employees from using internal complaint procedures to resolve problems. It has generated lawsuits that the Legislature has referred to as “frivolous.” Penalties for a single violation can equal $100 for each employee times the number of pay periods. Strikingly, the penalties can be doubled for subsequent violations. In this publication, Attorney Richard J. Simmons reviews the new law. Among the subjects covered in this publication are the following:

- Importance Of Self Audits
- New Remedies
- Court Review Of Claims
- Opportunity To Cure Some Violations
- New Penalty Rules
- One-Sided Attorney's Fee Provision
- Avoiding Litigation
- Posting Rules
- Notification Rules

LEAVES OF ABSENCE AND TIME OFF FROM WORK MANUAL

By Richard J. Simmons, Attorney with Sheppard, Mullin, Richter & Hampton LLP, L.A. (Tenth Edition • Over 200 Pages)

The new legislation provides numerous statutory rules that provide employees the right to leaves of absence. The evolution of these laws has dramatically eroded the freedom employers formerly had to grant or deny time off requests. In many cases, several laws may provide an employee overlapping protections through a complicated system of rules. In this new publication, Attorney Richard J. Simmons examines the key statutory rules and the obligations they create. Among the numerous topics addressed in the publication are the following:

- Legal Obligations
- Federal & State Laws
- Family and Medical Leave
- Organ and Bone Marrow Donor Leave
- Qualifying Events
- Parental Obligations
- Notification Rules
- Limitations on Benefits
- Domestic Partner Rules
- Eligibility Period
- Use of Vacation Leave
- Checklists & High Risk Areas
- New Salary Level Test
- Qualifying Events
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- Domestic Violence Leave
- Disqualifying Events
- Workers' Compensation Leave
- Staffing Issues
- Employer Policies
- Leave of Absence Issues
- Required Personnel Policies
- Pregnancy Leaves
- Sample Forms and Checklists

CALIFORNIA’S PAID FAMILY LEAVE LAW: SB 1661

By Richard J. Simmons, Attorney with Sheppard, Mullin, Richter & Hampton LLP, L.A. (Second Edition • Over 120 Pages)

In 2004, landmark legislation authorized paid family leave benefits for California workers. SB 1661 is the first legislation of its kind in the nation. It will authorize the payment of benefits to eligible employees in 2004. It requires employers to notify new and existing employees of their legal rights. The legislation is expected to create problems with staffing, productivity, scheduling, and efficiency. Employers must implement measures to comply with the new obligations resulting from SB 1661. In his new publication, Attorney Richard J. Simmons examines the provisions of SB 1661 in detail. He addresses the qualifying events, benefit provisions, relationship between the new paid leave benefit rules and other leaves of absence laws, the ability to require employees to use vacation leave, the new notification rules, and the proactive steps that employers should evaluate. Among the subjects discussed in the publication are the following:

- Qualifying Events
- Eligibility Period
- Use of Vacation Leave
- Notification Rules
- Limitations on Benefits
- Domestic Partner Rules
- Checklist for Employers
- Impact on CFRA Leave
- Domestic Violence Leave
- Staffing Issues
- Leave of Absence Issues
- Required Personnel Policies
- Pregnancy Leaves
- Sample Forms and Checklists

CALIFORNIA EMPLOYER’S GUIDE TO THE FEDERAL OVERTIME EXEMPTIONS

By Richard J. Simmons, Attorney with Sheppard, Mullin, Richter & Hampton LLP, L.A. (Eleventh Edition • Over 290 Pages)

After more than 50 years, the U.S. Department of Labor (“DOL”) has issued new regulations revising the federal overtime exemption standards. The final regulations govern employers in virtually all industries and took effect in 2004. They define the “white collar exemptions” from the federal minimum wage and overtime rules for executive, administrative, professional, and computer, and outside sales employees. In this new publication, Attorney Richard J. Simmons analyzes the key statutory rules and the obligations they create. Among the numerous topics addressed in the publication are the following:

- Overview of Regulations
- Executive Exemption
- Administrative Exemption
- Professional Exemption
- Key Definitions and Concepts
- Clarifications of Standards
- Summary of Changes
- Salary Basis Standards
- Significance in California
- New Salary Level Test
- Safe Harbor Rules
- Computer Employee Exemptions

CALIFORNIA’S ANTI-BUSINESS EMPLOYMENT LAWS

By Richard J. Simmons, Attorney with Sheppard, Mullin, Richter & Hampton LLP, L.A. (Second Edition • Over 450 Pages)

California has the toughest and most costly employment laws in the nation. In this new publication, Attorney Richard J. Simmons addresses the numerous workplace statutes that burden California businesses. It examines the far-reaching network of new rules that touch upon such diverse subjects as wage-hour reform, employment discrimination, time off, leaves of absence, mass layoffs, plant closings, background checks, lactation accommodations, and paid family leave. It also reviews the devastating impact of these new laws on California businesses and employment. Among the subjects discussed in the publication are the following:

- Overregulation of California Businesses
- Year-By-Year Analysis of Legislation
- Remedies for Undocumented Workers
- Paid Family Leave Law
- Workplace Communication Rules
- Cal-COBRA Changes
- Wage-Hour Reforms - AB 60 Changes
- Layoffs and Plant Closings
- Selected Bills
- Pro-Union Measures
- New Payroll Laws

AB 60 - THE REFORM OF CALIFORNIA’S WAGE AND HOUR LAWS

By Richard J. Simmons, Attorney with Sheppard, Mullin, Richter & Hampton LLP, L.A. (Fourth Edition • Over 210 Pages)

On October 1, 2000, the new Wage Orders of the Industrial Welfare Commission (IWC) took effect under AB 60, the “Eight-Hour-Day Restoration and Workplace Flexibility Act.” The new legislation and Wage Orders have a major impact on virtually all California employers. In addition to reinstating the daily overtime provisions of California law, the legislation creates other over-time standards, changes the exemption rules, and establishes new rules regarding “alternative workweek schedules,” meal periods, meal and rest period penalties, personal liability, and a citation system, among others. It is the most significant wage-hour legislation in over 20 years. In this new publication, Attorney Richard J. Simmons reviews the new legislation and the IWC’s final rules in a concise and understandable manner. The publication reviews the new AB 60 and IWC rules, including:

- New Overtime Rules
- Alternative Work Schedule Rules
- Salary Basis Rules
- New Citation System
- New Meal & Rest Period Penalties
- Sample Make-Up Time Form
- New Exemption Standards
- Sample Time Card Verifications
- Professional Exemption Rules
- Personal Liability Standards
- Sample Make-Up Time Policy
- Final IWC Rules
A complete, non-technical guide to State and Federal employment discrimination laws.

A one-stop desk reference showing requirements of laws applicable to California employers.

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At last—a clear and understandable manual that contains all the important information California employers need to make and implement important decisions and to defend discrimination, discipline, and termination complaints.

• SEXUAL HARASSMENT RULES
• FEHC REGULATIONS
• PREGNANCY DISCRIMINATION
• FAMILY AND PREGNANCY LEAVES
• WORKERS’ COMP LEAVES
• DEFENSES

EMPLOYMENT DISCRIMINATION AND EEO PRACTICE MANUAL FOR CALIFORNIA EMPLOYERS
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Complaint, Investigation, and Enforcement
Procedures
FEHA Complaints
Right to Sue Letters
Exclusionary Relief
Defenses, Burdens, and Remedies
Burdens of Proof and Production of Evidence

California’s Meal and Rest Period Rules: Proactive Strategies for Compliance
By Richard J. Simmons, Attorney with Sheppard, Mullin, Richter & Hampton LLP, L.A. (Second Edition • Over 120 Pages)

This new publication examines California’s unique meal and rest period rules and the new California Supreme Court decision that interprets them. The new sanctions created for violations of these rules have led to numerous cases, including an epidemic of class action lawsuits. It is authored by one of California’s leading experts on wage-hour law, Attorney Richard J. Simmons of the law firm of Sheppard, Mullin, Richter and Hampton, LLP. All California employers must be aware of their obligations and the high price they may pay for noncompliance. California has the toughest rules in the country. It imposes unmatched requirements and potential liabilities for employers. The publication is designed to assist employers to understand and address their legal obligations under state law. Sample forms are included to remind new and existing employees of their right to meal and rest periods and to secure their cooperation. Among the numerous subjects covered are the following:

• Meal Period Rules
• Rest Period Rules
• Remedies & Sanctions

• Meal Period Charts
• Proactive Strategies
• Sample New-Hire Forms

• Record-Keeping Obligations
• New Cases
• Timing Of Meal Periods

Sexual Harassment Training Manual and Prevention Kit
By Richard J. Simmons, Attorney with Sheppard, Mullin, Richter & Hampton LLP, L.A. (Ninth Edition • Over 170 Pages)

Every workplace in America is vulnerable to sexual harassment claims. Statistically, they are among the most common claims filed against employers. While experts recognize that prevention is the best cure, employers often wait until claims are filed to address the problem. New legislation in California requires all employers with 50 or more employees to train their supervisors. Employers must take direct and immediate steps to train employees and prevent harassment under the law. In this new publication, Attorney Richard J. Simmons provides essential advice to employers regarding prevention steps, including training, complaint procedures, investigation techniques, and corrective action measures. The publication provides tools, including training outlines, quizzes, policies, and “promise” statements, that will help employers avoid problems altogether and win cases that are unfounded. Among the subjects addressed in the publication are the following:

• Guidelines for Prevention
• Sample Policies
• The New California Training Law

• Instruction Tools & Employee Quizzes
• Analysis of EEOC Guidelines

• Orientation Checklist & Form
• Interactive Training Tools

• Information Sheet on Harassment
• Investigation Guidelines
• Rules Against Retaliation

• Sexual Harassment Training Manual
• Sexual Harassment Training Software

9th Edition
REVISED COMPLETELY
2nd Edition • Over 120 Pages
9th Edition • Over 170 Pages

Among the subjects addressed in the publication are the following:

• CALIFORNIA RULES
• INSURANCE PORTABILITY RULES
• 29-MONTH CONTINUATION PERIOD
• EXAMINATION OF ALL COBRA RULES

The publication reviews COBRA’s new and existing rules. Mullin, Richter & Hampton reviews the rules in a concise and understandable manner.

In this publication, Attorney Richard J. Simmons of the law firm Sheppard, Mullin, Richter & Hampton LLP, provides employers a guide through the complicated web of rules created by the law. Among the subjects addressed in the publication are the following:

• NEW– COBRA – HEALTH INSURANCE LAW

All employers with 20 or more employees who provide health and medical benefits must now comply with the federal health insurance law—called COBRA. The law gives employees and their dependents the right to continue coverage under their employer’s health plan after termination, resignation, divorce, death, layoff, and other qualifying events. In addition, California law requires employers to provide supplemental insurance protection and written disclosures.

In this new publication, Attorney Richard J. Simmons of the law firm of Sheppard, Mullin, Richter & Hampton reviews the rules in a concise and understandable manner. The publication reviews COBRA’s new and existing rules.

California employers are subject to two safety laws that will dramatically affect their practices and policies. S.B. 198 requires every California employer to adopt, implement, and maintain a written injury and illness prevention program. In addition, the California Corporate Criminal Liability Act also requires managers, high-ranking individuals, and corporations to report certain safety hazards to employees and appropriate government agencies and to correct such hazards in a timely manner.

In this publication, Attorney Richard J. Simmons provides employers concise, practical information regarding the obligations created by the new law and the manner in which to comply. Among the subjects addressed in the publication are the following:

• SAMPLE INJURY AND ILLNESS PREVENTION PROGRAMS
• REVIEW OF STATUTORY RULES
• IMPACT ON OSHA

The Federal Immigration Law

The Immigration Reform and Control Act establishes new rules for all employers throughout the country. It prohibits the employment of unauthorized aliens, as well as the continued employment of such individuals. It also requires every employer to screen all job candidates who receive job offers to determine their true identity and legal authority to work in the U.S. This publication provides an understandable analysis of the law and its rules.

The Federal Polygraph Law

Until recently, federal law did not regulate the use of lie detectors and polygraph tests by employers. The vacuum in regulations was filled when Congress enacted the Employee Polygraph Protection Act (EPPA). The new federal law established detailed rules that apply to such tests in the future. This publication provides a useful analysis of the federal law and the laws of many states as well.

The WARN-Mass Layoff and Plant Closing Law

The Worker Adjustment and Retraining Notification Act (WARN) applies to virtually all employers throughout the country with 100 or more employees. It creates advance notice rules that apply before a mass layoff or business closing can occur. Sanctions for violating the law can be substantial. Employers must understand their obligations under these rules.

The Federal OSHA Rules

The Occupational Safety and Health Act of 1970 (OSHA) requires employers to provide employees with a workplace free from recognized hazards that may cause death or serious physical harm. This publication provides a useful analysis of the OSHA rules and regulations.
WAGE AND HOUR MANUAL FOR CALIFORNIA EMPLOYERS - Table of Contents (partial listing)

**Introduction**
- General Scope
- Use by Government Employers
- AB 60 Changes
- Changes in Wage Orders

**Coverage of Wage and Hour Laws**
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- F.L.S.A. Coverage
- Coverage Under California Wage Orders
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- The "Workday"
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- "Statutory Exclusions" From the Regular Rate
- Lump-Sum Payments for Call-Backs and Other Overtime Work

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- 14-Day Periods
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Talbott Smith was appointed Deputy Director of Unemployment Insurance Branch in November 2009. Talbott has more than 30 years experience with the Employment Development Department. He previously held staff and management positions in both the Unemployment Insurance Branch and Information Technology Branch. Talbott began his state career in the Modesto area in December 1975 as an Employment and Claims Assistant in the EDD Ceres Farm Labor Office, and has worked in the Sacramento area since 1981. Prior to this appointment, Talbott served in Unemployment Insurance Branch as Chief of the Unemployment Insurance Adjudication Services Division and as Chief of the Unemployment Insurance Policy and Coordination Division.

Mr. Smith holds a bachelor’s degree in Business Administration from California State University, Sacramento.
CALIFORNIA

Unemployment Insurance Program

Employment Development Department
CUIC Conference – May 11, 2011

www.edd.ca.gov
DISCUSSION POINTS

- Unemployment Rate
- UI Workload Comparison
- Federal Extensions
- Trust Fund Forecast
- President’s Proposal
- Enacted State Legislation
- Alternate Base Period
- Automation Projects
# UNEMPLOYMENT RATE

<table>
<thead>
<tr>
<th>Year</th>
<th>March 2009</th>
<th>March 2010</th>
<th>March 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unemployment Rate</td>
<td>10.6%</td>
<td>12.4%</td>
<td>12.0%</td>
</tr>
</tbody>
</table>

* Most recent data indicates 1.3 million people currently claiming UI benefits
## UI WORKLOAD COMPARISON

<table>
<thead>
<tr>
<th></th>
<th>December 27, 2009 through March 20, 2010</th>
<th>December 26, 2010 through March 19, 2011</th>
<th>Difference</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Claims</td>
<td>1,772,464</td>
<td>1,586,520</td>
<td>185,944</td>
<td>-10.49%</td>
</tr>
<tr>
<td>Internet Claims</td>
<td>588,162</td>
<td>400,295</td>
<td>187,867</td>
<td>-31.94%</td>
</tr>
<tr>
<td>Internet Inquiries</td>
<td>543,313</td>
<td>170,160</td>
<td>373,153</td>
<td>-68.68%</td>
</tr>
<tr>
<td>Weeks Claimed</td>
<td>17,943,142</td>
<td>15,217,910</td>
<td>2,725,232</td>
<td>-15.19%</td>
</tr>
<tr>
<td>Benefits Authorized</td>
<td>$5,470,459,788</td>
<td>$4,171,139,476</td>
<td>$1,299,320,312</td>
<td>-23.75%</td>
</tr>
</tbody>
</table>

- For 2010, CA paid an average of about $88.2 million a day in UI benefits
- For 2011 year-to-date, CA is paying an average of about $74.6 million a day in UI benefits
- Biggest payment day in UI program history: December 14, 2009 with $189 million total UI benefits paid
# Federal Extensions

<table>
<thead>
<tr>
<th>Extensions</th>
<th>Weeks of Benefits</th>
<th>Last Effective Filing Date</th>
<th># of EUC Claims filed as of 3/19/11</th>
</tr>
</thead>
<tbody>
<tr>
<td>EUC Tier 1</td>
<td>Up to 20</td>
<td>December 25, 2011</td>
<td>2,929,505</td>
</tr>
<tr>
<td>EUC Tier 2</td>
<td>Up to 14</td>
<td>January 1, 2012</td>
<td>1,597,391</td>
</tr>
<tr>
<td>EUC Tier 3</td>
<td>Up to 13</td>
<td>January 1, 2012 / June 3, 2012 *</td>
<td>1,044,782</td>
</tr>
<tr>
<td>EUC Tier 4</td>
<td>Up to 6</td>
<td>January 1, 2012</td>
<td>747,494</td>
</tr>
<tr>
<td>FED-ED (100% federal funding)</td>
<td>Up to 20</td>
<td>January 8, 2012</td>
<td>767,784</td>
</tr>
</tbody>
</table>

*Extended the last effective date for filing tier 3 without a prior FED-ED to 1/1/12, and Tier 3 with a prior FED-ED to 6/3/12*
# UI TRUST FUND FORECAST

**October 2010**

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2010*</th>
<th>2011*</th>
<th>2012*</th>
</tr>
</thead>
<tbody>
<tr>
<td>UI Taxes Paid by Employers</td>
<td>$4.2 billion</td>
<td>$4.6 billion</td>
<td>$5.1 billion</td>
<td>$5.4 billion</td>
</tr>
<tr>
<td>UI Benefits Paid</td>
<td>$11.3 billion</td>
<td>$9.3 billion</td>
<td>$8.8 billion</td>
<td>$8.4 billion</td>
</tr>
<tr>
<td>Trust Fund Balance</td>
<td>-$6.2 billion</td>
<td>-$10.3 billion</td>
<td>-$13.4 billion</td>
<td>-$16.0 billion</td>
</tr>
</tbody>
</table>

*The figures for these years are projections from the October 2010 forecast.*
Proposal Goals:

1. Provide immediate relief to employers in indebted states for the next two years, and

2. Provide states with a way to improve the solvency of their UI Programs, while keeping federal revenues neutral.
1. Waive Interest Payments

- For calendar years 2011 and 2012 state would be relieved of their interest payments on Federal loans.

- No interest would accrue on any outstanding advances from January 1, 2011 through December 31, 2012.

- Interest would again be charged beginning on January 1, 2013 and the first payment would be due on September 30, 2013.
2. Suspend the Federal Tax Credit Reductions on Borrowing States

- For calendar years 2011 and 2012 employers in indebted states would be relieved of any automatic increases (credit reductions) in the Federal Unemployment Tax (FUTA).

- Outstanding loan balances on January 1, 2011, and January 1, 2012, would not be considered for any state in calculating future amounts of FUTA credit reduction.
3. Increase the Taxable Wage Base subject to UI Taxes

- In 2014, the minimum taxable wage base subject to UI taxes would be increased from $7,000 per worker to $15,000 and then indexed to the growth in average wages each year afterward.

- Each state with a taxable wage base below $15,000 would be required to raise its state wage base for its employers to receive the full FUTA tax credit.
4. Lower the Federal Unemployment Tax Rate

- Beginning in 2014 the effective FUTA tax rate would be reduced to 0.38% from the current level of 0.8%.

- This changes the total FUTA tax rate from 6.2% to 5.78% where it will remain each year afterward.

- The proposal does not change the existing FUTA credit amount (5.4%), the value of the minimum state maximum tax rate (5.4%), or the FUTA credit reductions applied to states with outstanding advances.
ENACTED STATE LEGISLATION

Senate Bill 1211
Unemployment Insurance: Eligibility for Elected Officials
Chapter 222, Statutes of 2010

- Signed into law on September 13, 2010.
- Effective January 1, 2011.
- Clarifies existing law which prohibits an elected official from receiving UI benefits based on income earned as an elected official and prohibits the waiver of any overpaid amount.
Assembly Bill 2364

Unemployment Insurance: Good Cause to Leave Work
Chapter 678, Statutes of 2010

- Signed into law on September 30, 2010.
- Effective January 1, 2011.
- Broadens the UI good cause provision related to a quit due to domestic violence to include individuals and their families (rather than individuals and their children).
- Ensures California qualifies for additional federal funds under the American Recovery and Reinvestment Act.
Assembly Bill 2055

Unemployment Insurance Benefit Eligibility: Imminent Domestic Partners
Chapter 590, Statutes of 2010

- Signed into law on September 30, 2010.
- Effective January 1, 2011.
- Extends UI benefits to individuals who leave work voluntarily to accompany a partner to whom registration with the Secretary of State for a domestic partnership is “imminent.”
Assembly Bill 2058
Unemployment Insurance: Retraining Benefits
Chapter 591, Statutes of 2010

- Signed into law on September 30, 2010.
- Effective no later than July 1, 2011.
- Expands eligibility for the California Training Benefits (CTB) program by allowing for both automatic and potential approval under specified circumstances.
Overview

- Assembly Bill X3 29 was signed into law on March 27, 2009, requiring the department to implement an Alternate Base Period (ABP) for claimants who are not eligible for benefits using the regular base period (BP).

- Although current statute require the ABP to be in effect no later than September 3, 2011, actual implementation will take place April 2012.
Current Process

- The BP is a 12-month period.

- The BP is used to establish an individual’s eligibility to file a valid UI claim.

- California’s current BP is the first four of the last five completed quarters.
Changes due to ABP

- If an individual cannot establish a claim using the regular BP, the department will attempt to file a valid claim using an ABP.

- The BP used to establish an ABP claim is the last four completed quarters at the time the claim is filed.
Benefits

- Provides UI benefits to claimants who wouldn’t otherwise qualify.
- Allows UI to better assist unemployed workers who are recent entrants into the labor market.
- Allows California to take advantage of up to $839 million in federal special funding.
Call Center Network Platform Application Upgrade Project

- This project connected all UI Centers to a new telephone platform. The end result is an increased capacity to answer calls. It also added the ability for claimants to submit the Continued Claim Form Certification by phone using the EDD Tele-Cert.

Continued Claims Redesign Project

- This will provide the capacity for UI claimants to certify for benefits by the Web or phone through the IVR. In addition, this project will provide claimants with a variety of other self-service options through our web site.
AUTOMATION PROJECTS

Electronic Benefit Payment Project

- This project establishes the use of electronic benefit payments via debit cards and direct deposit (eliminates the use of paper checks).

Single Client Database Modernization Project

- Through this project, the EDD will be able to standardize to a relational database platform that will be easier to maintain, change, and optimize to meet service needs.
QUESTIONS?
Matthew Bartosiak has been Manager of the Employers Group Consulting Helpline since mid-
2000. Joining the Association in 1980, Matt's first position was as Research Analyst, conducting
the Association's compensation surveys. In 1982, he was promoted to Staff Consultant. During a
brief hiatus in 1991, Matt worked for the Aerojet Corporation in compensation. He returned to
the Employers Group in 1991 as Senior Staff Consultant. Currently as Manager of the
Consulting helpline, Matt manages the highest member ranked service, EG's consultant phone
line.

Matt writes and presents extensively for the Employers Group. He is also a major spokesperson
for the association regarding employers’ interests in the regulatory and legislative arenas. In
addition, as the resident COBRA expert, Matt teaches this class for the Management Education
Department. He is a human resources generalist and consults in all related areas. His
specializations include: benefits and wage and hour, especially exemption issues. Like all of the
Employers Group consultants, he deals with many members issues relating to discrimination,
workers' compensation, health and safety and employee relations. In 1996 he was appointed to
California's Wage Board called for Wage Order 4-89. The board was called to review state wage
and hour rules for several occupations, and to make recommendations for change. In 2002, Matt
was appointed to California’s Minimum Wage Board, which was called to examine the adequacy
of the minimum wage and make any recommendation for change.

Matt has served on the Human Resources Board for the Los Angeles Chapter of the American
Red Cross and is also as a member of the Human Resources and Security Management Council
for the Industry Manufacturers Council.

Previously, Matt was a teacher and guidance counselor. He was also a manpower planner for the
City of Philadelphia. He holds a BA in Sociology from Boston College, and a MBA from West
Virginia University.
CURBING ABUSE OF INTERMITTENT LEAVE
By
Matt Bartosiak, Employers Group

CERTIFICATION

- ESSENTIAL FUNCTIONS
- 2nd OPINIONS--
- INCOMPLETE INFORMATION
- NO DIAGNOSIS, PROGNOSIS
- RECERTIFICATION

MAINTAINING WORKPLACE EFFICIENCY

- Medical Appointments
- Transfers
- Watch for Patterns of Abuse—Address It with Employee
- Termination for Fraud
- Question Each Absence
- Hold employee to call out procedures

PAY AND BENEFITS

- You can pay exempts on hourly basis
- Forcing Sick, Vacation, or PTO
- Health Insurance ----12 weeks in 12 months, COBRA?
- How to recover Fronted Health Premiums

GENERAL TIPS

- Always give specific drop dates when you want **anything**
- Always have the employee call you to make sure “whatever” is received
- Messages---No “5 am” voicemails, messages with receptionist, or security guard
- To the extent possible, have employee communicate with you in writing, e-mail.
- When you give a direction by phone follow up with e-mail, or letter.
- Always lay out method of communication desired to employee
- Especially, if employee has a problem—get it in writing.

For a list of important links go to Employers Group>Helpline>click on helpline tab and click on HR links.
Biographical Information for Ann M. Noel

Ann M. Noel is Executive and Legal Affairs Secretary (ELAS) with the Fair Employment and Housing Commission, California’s adjudicatory civil rights agency, which hears complaints involving discrimination in employment, housing, and public accommodations; pregnancy disability leave; family and medical leave; and hate violence. As ELAS, Ms. Noel is the executive officer and principal legal advisor for the Commission, and its chief administrative law judge.

Ms. Noel has drafted sexual harassment training regulations and regulations on pregnancy disability leave, coordinating her work with FEHC regulations interpreting the California Family Rights Act (CFRA) (Gov. Code §§ 12945.2).)

Currently, Ms. Noel is working with a Commission regulations subcommittee to revise the Commission’s pregnancy and disability discrimination and CFRA regulations and is working to write new housing discrimination regulations.

Ms. Noel has taught employment discrimination law at New College School of Law in San Francisco. She is a graduate of the University of California at Berkeley (1974) and of the University of California at Davis School of Law (1977).
Lonnie Giamela is a partner in both the Los Angeles and Irvine offices. He represents employers in all aspects of labor and employment law, including wage and hour compliance, employment policies and practices, fair employment and FMLA/CFRA compliance, litigation, supervisor training, mass layoff and independent contractor classification matters. His clients range from small businesses to national companies in all sectors of manufacturing, retail, wholesale distribution, hospitality, education and the automotive industries. Lonnie has conducted more than 200 seminars to management, executives, human resources professionals and employer groups on a multitude of topics including fair employment, medical leaves, mass layoffs, FMLA/CFRA compliance, independent contractor classification matters and wage and hour compliance. He represents clients before state, appellate and federal courts as well as governmental agencies such as the Department of Fair Employment Housing, the Division of Labor Standards Enforcement and Employment Development Department, Prior to joining the firm, Lonnie worked for United States Congressman James E. Rogan, the Office of Legislative and International Affairs at the United States Patent and Trademark Office, and the Fox News Channel. Lonnie is “AV” Peer Review Rated by Martindale-Hubbell.

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- U.S. District Court for the Central District of California
- U.S. District Court for the Eastern District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California
- Supreme Court of California

Professional Activities:
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  - Los Angeles Bar Association
  - Armenian Bar Association

Areas of Practice:
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- Employment Contracts
- Wage and Hour Law
- Litigation
- Employee Leaves

Bar Admissions:
- California

Education:
- Georgetown University Law Center, Washington, DC
  - J.D. 2003
- George Washington University, Washington, DC
  - B.A. 1999, magna cum laude
Lex Romana
Banyard Inn of Court

Community Involvement:
National Italian American Foundation
San Gennaro Foundation
Childrens Hospital of Orange County
Burbank Chamber of Commerce

Published Articles:
Avoiding Unique Employment Law Challenges Posed by the Generation Y Work Force
Forecasting New Labor and Employment Legislation in 2009
How to Build Your WikiLeaks Wall
The Employment Law Implications of the Dodd-Frank Act
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Why Discussing Politics in the Workplace is Just, Well, Bad Politics

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Unique HR Challenges Posed By The Myspace.com Generation - San Diego, CA
MAKING SENSE OF CALIFORNIA LEAVE LAWS

Presented By:

Ann Noel
Executive and Legal Affairs Secretary,
California Fair Employment and Housing Commission

Lonnie Giamela,
Partner,
Fisher & Phillips LLP
Today We’ll Discuss:

- Types of Leave
- How much leave an employee is entitled to take
- Liability Risks
- Best Practices Suggestions
Each leave law deals with a different set of conditions.
The trick to the puzzle is figuring out which leaves apply.
Questions to Ask Each Time Employee Needs Leave

- What forms of leave is this employee entitled to take?
- What are the eligibility requirements for each leave entitlement?
- How much leave can the employee take under each leave entitlement?
- Do these leaves run concurrently?
- What are the return rights for each form of leave?
FMLA/ CFRA
FMLA/CFRA is concerned with:

- Providing a minimum level of unpaid, job-protected leave to eligible employees;
- Covering those who suffer from a serious health condition;
- Cover those providing Military Caregiver Leave or Exigency Leave; and
- Protecting those employees from adverse treatment because of the need for leave.
FMLA/CFRA Overview

- The FMLA and CFRA provide up to 12 weeks of unpaid job-protected leave provided that certain conditions are met.
- The FMLA also provides up to 26 weeks of leave to care for military servicemember.
Employer Eligibility

An employer who has fifty (50) or more employees for a 20-week period during the current or precedent calendar year, within a 75-mile radius, is covered.
Employee Eligibility

(1) Employee has worked for the Company for at least 12 months (e.g. 52 weeks)

- 12 months do not have to be consecutive
  - How far back to look?
- Count any week in which the employee is maintained on the payroll
Employee Eligibility

(2) Employee has worked for the Company for at least 1,250 hours during the 12 consecutive months preceding the start of the leave (not the date of the requests the leave).

(3) Employee works at a work site where there are at least 50 employees within a 75-mile radius.
Six Qualified FMLA/CFRA Requests

1) For employee’s own “serious health condition” that makes him/her unable to perform job.

2) To provide care for employee’s immediate family member with “serious health condition.” (note difference btw. FMLA/CFRA)

3) For the birth of a child, and to care for the newborn child.

4) For the placement of a child with the employee for adoption or foster care.
Six Qualified FMLA Requests

5) To provide care for a Covered Servicemember with a serious injury or illness related to certain types of military service.

6) Exigent Circumstances Military Leave. Includes: short notice deployment, military events, childcare and school activities, financial and life arrangements, counseling, rest and recuperation, post-deployment activities

Note: Laws differ on pregnancy qualification for leave.
Your company supervisor Bob McIntyre tells you that two of his employees want time off. The first employee, Dru Sanders, wants time off to assist her partner as she recovers from cancer surgery. The second employee, George Wells, wants time off to take care of his parent who is dying of lung cancer. McIntyre wants to know, how much leave can each employee take?
Quiz # 1

Which of these leaves are Sanders and Wells entitled to take, for how long and why?

- A. CFRA
- B. FMLA
- C. Company Personal Leave
- D. Kin Care Leave
- E. Paid Family Leave
Answer – for Sanders:

- A. CFRA – yes, 12 weeks
- B. FMLA – no. Domestic partners aren’t covered, so employee won’t use her FMLA leave.
- C. Company Personal Leave – any leave policy for spouses also would need to cover domestic partners
- D. Kin Care Leave – yes, up to 6 months’ accrued sick leave
- E. Paid Family Leave – yes, 6 weeks’ benefits
Answer, for Wells

- A. CFRA – yes, 12 weeks
- B. FMLA – yes, 12 weeks, which will run concurrently with FMLA.
- C. Company Personal Leave – any leave policy for spouses also would need to cover domestic partners
- D. Kin Care Leave – yes, up to 6 months’ accrued sick leave
- E. Paid Family Leave – yes, 6 weeks’ benefits
Notification: Employer Must Provide 4 Notices

Common pitfall for employer is technical violations for not providing notices.

1) General Notice
   - Provide upon hire of employee.

2) Eligibility Notice
   - Provide within 5 days of request for FMLA leave, or when acquire knowledge that leave may be for a FMLA reason.
Notification: Employer Must Provide 4 Notices

3) Rights and Responsibilities Notice
   - Provide if the employee is eligible to take FMLA leave.
   - Inform employee of any requirements

4) Designation Notice
   - Provide within 5 days of receipt of information sufficient to make designation determination.
   - Retroactive designation allowed if no harm or injury
Calculating FMLA/CFRA leave

1) “Rolling” Method. The best method of calculating the 12-week leave period is the “rolling” method by which the employer looks back in time to the last FMLA/CFRA leave and calculates one year from that time. This is the only method that avoids employees’ stacking.

2) Calendar Year. The employer may also use the calendar-year method by which the employer provides up to 12 workweeks of leave to each eligible employee each calendar year.

3) Twelve-Month Period. The employer may also institute a policy that provides up to 12 weeks of FMLA/CFRA leave in any 12-month period.
Intermittent Leaves
Can employees do that?

- Must be granted if “medically necessary,” not for personal convenience.

- Employer has option of switching employee to an alternative position, with an equivalent rate of pay, if it better accommodates recurring periods of leave.

- If it is medically necessary for employee to be absent every Monday, each absence counts as a single day of leave under FMLA/CFRA (rather than as a workweek of leave) if the employee otherwise remains in the same job and has no substantial shift in duties.
Benefits during FMLA/CFRA leave

- FMLA/CFRA leave is unpaid, but employee may request (or employer may require) use of paid leave as a substitute for unpaid leave.
- Employer must continue to maintain health care benefits, unless:
  - Employee’s FMLA/CFRA rights are exhausted
  - Employee provides Company with unequivocal notice of his or her intent to not return to work
  - Employee’s job is terminated for non-FMLA reasons (e.g. layoff)
- Employees returning from leave must be fully restored to all benefits.
ADA/FEHA LEAVE

How does it compare?
Emphasizing what employee can do as opposed to focusing on employee’s limitations;

Requiring employers to evaluate an individual’s fitness to perform the essential functions of the job on a case-by-case basis; and

Considering any reasonable accommodation in the process.
Definitions May Overlap

- Not all “disabilities” under ADA/FEHA are “serious health conditions” under FMLA/CFRA.

- Not all “serious health conditions” under FMLA/CFRA are “disabilities” under ADA/FEHA
FMLA/ CFRA vs. ADA/ FEHA

Leaves

- FMLA/CFRA available for family members
- FMLA/CFRA limited to 12 weeks (or 26 weeks), but
- FMLA/CFRA has length of service requirements
- FMLA/CFRA has no “undue hardship” defense.
- ADA/FEHA is available for employees only
- ADA/FEHA is open ended as “reasonable accommodation.”
- ADA/FEHA has no length of service requirements
- ADA/FEHA has undue hardship defense
FMLA/CFRA vs. ADA/FEHA
Leaves Con’t

- ADA/FEHA requires accommodation if employee cannot perform prior job without accommodation and FMLA does not consider accommodation.

- ADA/FEHA accommodations must be reasonable and do not necessarily have to be the employee’s first choice of accommodation.
Disability Leave

Who is Disabled?

A qualified individual with a disability is an individual with a physical or mental impairment, who, with or without reasonable accommodation, can perform the essential functions of the job that he/she holds or desires.
Requirements Under ADA & FEHA

- Employers are required to accommodate a “qualified individual” with a disability unless it would pose an undue hardship.
Reasonable Accommodation Under The ADA & FEHA

What is a Reasonable Accommodation?
- Access to facilities
- Job Restructuring (modified duty/schedule?)
- Reassignment (vacant position?)
- Rescheduling
- Re-equipment

Reasonable accommodation is also allowing an employee a reasonable amount of time off from work
What’s **not** reasonable?

- An accommodation that is not effective in allowing employee to do essential functions of job
- An accommodation that causes the employer “undue hardship”
- An accommodation that is a “direct threat” to the health and safety of the employee or his/her co-workers
- It is the employer’s burden to prove “undue hardship”
HOW MUCH LEAVE IS REASONABLE?

- Must not be an “indefinite” leave of absence
- How much is too much?
Who to Involve in Reasonable Accommodation Process?

- Employee’s direct supervisor
- HR
- A reasonable accommodation specialist
Pregnancy-Related Leaves of Absence
Pregnancy-Related Leaves of Absence: Overview

In California, pregnancy-related leaves of absence can involve the interaction of the FMLA, CFRA, and FEHA’s Pregnancy Disability Leave (“PDL”) requirements.
Non-FMLA Eligible Pregnant Employee

**PDL Requirements:**

- Covers all employers with five (5) or more employees.
- Employees are entitled to up to four (4) months of unpaid leave for disabilities associated with their pregnancy and childbirth.
- Employers must temporarily transfer employees if it’s medically advisable or reasonable.
- Employees returning within the four month period must be re-instated to their same or, under limited circumstances, a comparable position.
FMLA Eligible Pregnant Employee

- When a FMLA/CFRA eligible employee seeks a leave of absence due to their pregnancy, all three laws interact. To accurately track the various leaves, use a separate timeline for each law.
FMLA Eligible Pregnant Employee

1) FMLA - The first 12 weeks of the leave should be treated as FMLA qualifying.

2) PDL – Up to 4 months. Special attention needs to be paid to when the employee is no longer considered “disabled” due to her pregnancy/childbirth. This date is critical because it determines when the CFRA leave commences.

3) CFRA - The employee also is eligible for 12 weeks of unpaid leave under the CFRA for “bonding.” The CFRA leave time commences at the conclusion of the PDL leave, whenever that might occur, unless jointly agreed to by employer and employee.
Your supervisor Mercedes Huerta comes to you and tells you that one of her employees, Stephanie Smith, is pregnant. Huerta says that Smith’s doctor states that Smith has a “high risk” pregnancy, requiring extensive frequent doctor visits and probably long periods off for bed rest. Huerta wants to know what leave is Smith entitled to take?
Which of these leaves is Smith entitled to take and for how long?

A. Pregnancy Disability Leave (PDL)
B. Ca. Family Rights Act (CFRA) leave
C. Family & Medical Leave Act (FMLA) leave
D. Your company’s disability leave (CoDL)
E. Leave as a form of reasonable accommodation for employee’s disability (R/A Leave)
Answer

- A. PDL – yes (up to 4 months)
- B. CFRA leave – no (but can agree to let employee start early after 4 months PDL is exhausted)
- C. FMLA – yes (12 weeks)
- D. CoDL – yes (company leave limits, but at least 4 months)
- E. R/A Leave – maybe, indefinite limits
Quiz # 2

- Which of these leaves is Jones entitled to take, for how long and why?
  - A. CFRA
  - B. FMLA
  - C. Company Personal Leave
  - D. Kin Care Leave
  - E. Paid Family Leave
A. CFRA – 12 weeks
B. FMLA – 4 weeks (8 weeks of FMLA already used during employee’s pregnancy disability leave)
C. Company Personal Leave – length of time provided by company personal leave policy
D. Kin Care Leave – only if child is ill requiring employee’s care, then up to 6 months’ of employee’s accrued sick leave
E. Paid Family Leave – up to 6 weeks of benefits while on leave
Your Employee is **STILL** Preggers

- If your employee has exhausted her PDL leave or company leave, she *may be* entitled to further leave as a reasonable accommodation.
- You can opt to let her take her CFRA baby bonding leave early.
Putting It All Together

- Careless Charlie severely injures his back on November 1, 2010, while lifting boxes at his home. Charlie works for your firm that employs over 150 employees in Irvine and San Diego. He immediately requests leave from work. His doctor determines he needs to have back surgery and then will require physical therapy before he can return to work.

- How do you designate the leave of absence?
Putting It All Together

- Determine All Applicable Laws that Apply

What laws govern the time following the conclusion of the FMLA/CFRA leave?

Nov 1  Dec 1  Jan 1  Feb 1  Mar 1

12 Weeks

FMLA

CFRA
Putting It All Together

ADA/FEHA laws continue to apply at the conclusion of FMLA/CFRA leave

- Light Duty Assignments
- Additional Time Off
- Job Accommodation
Return to Work

- Injured Truck Driver Joe Sturges’ Return to Work
Your truck driver John Sturges has been out on workers’ compensation leave for one year. He’s now been deemed “permanent and stationary” by his doctor and is permanently restricted from lifting over 50 pounds. The job description for your company’s truck drivers requires drivers to lift up to 75 pounds. What do you do?
Options

1. Terminate Sturges’s employment after concluding that Sturges cannot perform one of the essential functions of the job
2. Call Sturges’ doctor to discuss his medical situation
3. Ask Sturges to give you permission to contact his doctor to discuss his medical situation
Meet with your company’s reasonable accommodation specialist (or an outside consultant) and look for ways that you might be able to reasonably accommodate Sturges

Meet with Sturges to discuss reasonable accommodation options after you’ve talked with your specialists

Meet with Sturges to discuss reasonable accommodation options
An Injured Worker Can Be a Disabled Worker

- An employee who sustains an on-the-job injury may be considered “disabled” under California and/or federal law.
- California: the injury “limits” a major life activity
- Federal: the injury “substantially limits” a major life activity
An employee that is “disabled” by an industrial injury has the right to return:

- to an existing job,
- a modified job or
- an alternative job

IF the employee can perform the “essential functions” of the position with or without reasonable accommodation.
BEST PRACTICES
SUGGESTIONS
Litigation Bait:

- "Our company has a policy that . . .
  1. No modified work after 90 days
  2. No permanent modified work
  3. An employee must be 100% healed to return to work"
Where Does The Liability Arise?

- Terminating employees on leave regardless of whether information resulting in termination was discovered prior to or after leave of absence.
- Failure to document interactive process.
- Failure to satisfactorily consider potential accommodations.
- Dealing with management who says, “The employee who filled the position is doing better than the employee on leave.”
Best Practices – Policies

- Employee Handbook (EEO, Harassment, FMLA/CFRA, state medical leaves, civic leave laws, state non-medical leave (e.g. domestic violence);
- FMLA/CFRA packet with required notices;
- Internal HR document summarizing laws (FEHC);
Best Practices – Practices

- Management training on leave issues;
- Infrastructure to track various leaves;
- Letters prepared to employees requesting additional information and/or confirming leave;
- Infrastructure to timely document interactive process;
- Audit of whether reasonable accommodation considerations are satisfactory.
Conclusion: Coordinate Leave of Absence Procedures

- Ensure that leave of absence procedures are in writing and communicated to employees.
- Ensure that procedures comply with the ADA/FEHA and FMLA/CFRA.
- Provide written notification of the terms of a leave of absence when an employee begins leave.
- Ensure that employees are evaluated on an individual, but consistent basis in deciding whether to grant leave, allow their return, or terminate them.
- Inform employee of benefits obligations during leave.
Best Practices – Interactive Process

- Meet with employee quickly to discuss reasonable accommodation options even if you think that there are none.

- Tell employee clearly what information that you need from employee (doctor’s notes, information on what accommodations employee is requesting) to ascertain whether reasonable accommodation is available, feasible and won’t cause undue hardship.
Best Practices

- **Document, document, document:**
  - *Take notes* of all meetings, telephone calls, requests to and from employee, save all emails & documents

- Provide employee with information about alternate jobs within company

- Explore whether a limited further leave would allow employee to return to work
Best Practices: Losing Contact With An Employee on Leave

A big medical leave problem!

- “No show”, “No call” on return date
- HINT—in **BOLD LETTERS** have this in the employee leave documents, and read it aloud to them, then they initialize it

- “If your medical leave is extended by your health care provider, you must call xxx at xxx no later than the day before your original return date to make sure the company has received the extension. Failure to do so could jeopardize employment”
Further Info

- California Fair Employment and Housing Commission: www.fehc.ca.gov
- California Department of Fair Employment & Housing: www=dfeh.ca.gov
MAKING SENSE OF CALIFORNIA LEAVE LAWS

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