

Employment Law Newsletter

February 24, 2005

12-Hour Workshifts are Permissible—But Overtime is Required

A recent California court decision has made clear that employers may schedule employees to work 12-hour workshifts as a part of an alternative workweek schedule.¹ For example, employees could be scheduled to work three 12-hour workdays and one 4-hour workday. However, an employer outside the healthcare industry is still required to pay its employees overtime for any time worked over 10 hours in one day. Thus, an employer would have to pay overtime for the last two hours in each 12-hour workshift. Those considering changing to an alternative workweek should be advised that there are numerous other requirements that must be met.

New Standard for Ensuring the Safety of Non-Employees

When a company is sued for negligently causing the injury of a person who is not its employee, the injured person must prove that the company violated its duty to ensure his or her safety. Since the early 1970's, whether the company met its duty to ensure the safety of non-employees was determined by comparing the company's actions to the customary actions of others in the industry. However, the California Supreme Court recently decided that the existence of Cal-OSHA safety standards may now be used in personal injury lawsuits to establish the "standard of care" for the company's conduct or establish whether a "duty of care" existed between the company and the injured person.² Consequently, companies should evaluate whether they are complying with Cal-OSHA regulations and refrain from violating those regulations even if doing so is an industry custom.

New Rights regarding an Employee's Registered Domestic Partner

Remember that, as of January 1, 2005, employers became obligated by law to treat spouses and registered domestic partners equally.³ In response, employers must extensively evaluate their policies, practices, and benefits and ensure that registered domestic partners are treated the same as spouses. For example, if a spouse may receive certain health benefits, the employer must ensure that a registered domestic partner may receive the same benefits. Similarly,

employers should review their leave policies because bereavement, CFRA, and other leaves are commonly allowed if an employee's spouse dies, becomes seriously ill, or meets some other requirement. Likewise, employers should review and rewrite policies dealing with marital status so that registered domestic partners receive the same treatment that a married person would, i.e. policies forbidding discrimination based on marital status should also forbid discrimination based on registered domestic partner status.

Seasonal OSHA Poster Should be Posted

Beginning February 1 through April 30, employers who have had 11 or more employees at any time in the last year are required to post [Cal/OSHA Form 300A](#) which provides employees with information regarding work-related injuries and illnesses that have occurred over the past year. Many employers may be exempt from this posting requirement if they work primarily in the retail, service, finance, insurance or real estate industries listed in the chart contained in title 8, section 14300.2 of the California Code of Regulations—the chart and additional information is available at http://www.dir.ca.gov/T8/14300_2.html. Remember, even though an employer may be exempt from this posting requirement, each employer must report all serious injuries or deaths that occur in the workplace to the Division of Occupational Safety and Health.

New Pay Requirement for Overtime Exemption of Computer Professionals

As of January 1, 2005, to be exempt from receiving overtime pay, computer professionals must be paid at least \$45.84 per hour.⁴ This represents an increase of \$1.21 per hour over last year's minimum pay requirement for the exemption. Please ensure that any exempt computer professionals have been paid at least that amount since January 1, 2005.

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¹ *Mitchell v. Yoplait* (2004) 122 Cal.App.4th Supp. 8.

² *Elsner v. Uveges* (2004) 34 Cal.4th 915.

³ Domestic Partner Rights and Responsibilities Act, ch. 421, 2003 Cal. Stat. 2586.

⁴ Labor Code §515.5(a)(3).