

Rediger, McHugh & Hubbert, LLP

Representing Management in Labor, Employment and Unfair Competition Litigation

LABOR AND EMPLOYMENT LAW REPORTER

Winter 2005

REDIGER, McHUGH & HUBBERT INCLUDED IN 2006 BAR REGISTER OF PREEMINENT LAWYERS

Martindale-Hubbell, a worldwide legal network provider for more than 137 years, has invited Rediger, McHugh & Hubbert, LLP to be included in its 2006 edition of the Bar Register of Preeminent Lawyers. Only 5% of all law firms in the United States qualify to be included in Martindale-Hubbell's Bar Register.

An integral part of Martindale-Hubbell's service to the legal profession is to evaluate lawyers using an exclusive Peer Review Rating system. Members of the Bar and the Judiciary complete a confidential questionnaire rating the legal ability and professional ethics of selected attorneys. Rediger, McHugh & Hubbert, LLP has been rated "AV" by Martindale-Hubbell, its highest and preeminent rating, since 1999. The Firm is now listed on the Martindale-Hubbell website (www.martindale.com) with an "AV" rating, the Bar Register icon, and a credential in the practice area of labor and employment law.

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Holiday Cheers: D.O.L. Warning On Employer Liability For Drinking

By Lori M. Sandoval

At this time of year, it is common for employers and employees to get together to celebrate the holidays. Problems may arise when office parties include alcoholic drinks.

Last week, the U.S. Department of Labor (D.O.L) issued a warning to employers advising them that the improper use of alcohol at office parties could expose them to liability under tort, workers' compensation, and other laws. For example, an employer can be held liable if a person consumes alcoholic beverages at a company-sponsored party and then later causes a crash. Some employers have been held liable for negligent acts by an employee under the influence of alcohol from a company-sponsored event if they are found to be within the scope of their employment. Still other cases have held employers liable merely for providing alcohol to social guests. *(Continued on page 3)*

Rediger, McHugh & Hubbert, LLP Presents

11th HOUR ANTI-HARASSMENT TRAINING

The **deadline** for employers that regularly employ 50 or more employees to provide two hours of anti-harassment training to their supervisors and managers is fast approaching. California Assembly Bill 1825 requires covered employers to provide such training by **December 31, 2005**. The employment law attorneys of Rediger, McHugh & Hubbert, LLP are offering two options to put our clients in compliance with AB 1825:

OPTION A - We are offering anti-harassment training **at our law firm on Friday, December 30, 2005** from 9:00 to 11:00 am at a total cost (including parking and materials) of **\$100.00 per attendee**.

OPTION B - If your company has more than a few supervisors or managers who have not received the anti-harassment training required by law, or who cannot attend the training offered as Option A, we will present the two hour training **at your facility or at our law firm, for a total cost of \$600.00**.

To schedule a training session, call Sara at **(916) 442-0033** or email us at **info@rmlaw.net**.

EMPLOYMENT LAW “ESSENTIALS” FOR 2006

Friday, January 6, 2006 – 9:00 a.m. to 12:00 p.m.

The Sutter Club – 1220 9th Street, Sacramento

Registration begins at 8:30 a.m. with Continental Breakfast

Client cost: \$100.00 for the first person, \$75.00 for each additional person

(Cost includes seminar, breakfast, written materials and parking)

Is your company in compliance with the employment laws and court decisions that became effective in 2005? As part of an ongoing commitment to our clients, Rediger, McHugh & Hubbert, LLP will provide business owners, human resource professionals, supervisors and managers with the information they need to understand recent changes in the federal and state employment-related laws. The attorneys will also provide sample forms and required notices to assist employers when dealing with typical personnel-related matters.

Topics To Be Addressed: Developments in California and Federal employment laws, including statutes and court decisions, model HR forms, sample personnel policies, required posters, notices and brochures, etc.

Our half-day seminar is currently being offered to the public at a higher cost. Due to the popularity of our past annual “Essentials” seminars, preference will be given to clients of our firm who register early. Register now to ensure that you and your managers are prepared for employment-related issues that may arise in 2006!

To register, please complete the form below and mail with a check for \$100.00 for the first attendee and \$75.00 for each additional attendee to our firm at 555 Capitol Mall, Suite 1540, Sacramento, CA 95814.

Company: _____ Phone: _____

Address: _____ Email: _____

Attendees: _____

Park in The Sutter Club Garage located at 824 L Street - Downtown Sacramento

Lori M. Sandoval Becomes An Associate Attorney With the Firm

We are pleased to announce that our former law clerk, **Lori M. Sandoval**, has joined our firm as a full-time associate. Ms. Sandoval is a 2005 graduate of the University of the Pacific McGeorge School of Law in Sacramento. After clerking at our firm in the summer of 2003 through the Sacramento County Bar Association's Minority Fellowship Program, Ms. Sandoval continued to research legal issues and write memoranda on various labor and employment law matters for us on a part-time basis while she completed law school. Prior to entering law school, Ms. Sandoval attended California State University Stanislaus where she obtained her B.A. in Psychology. She enjoys reading, gardening and cooking on her time off.



Lori M. Sandoval

U.S. SUPREME COURT EXPANDS THE COMPENSABLE WORKDAY FOR CERTAIN EMPLOYERS

By Jennifer L. Lippi

The U.S. Supreme Court, in *IBP, Inc. v. Alverez* and *Tum v. Barber Foods, Inc.*, (November 2005) unanimously held that employee time spent walking between work stations and locker rooms, where employees “don and doff” (*i.e.*, put on or take off) unique protective gear, as well as time spent waiting to “doff” gear at the end of a shift, is compensable. The Court in *IBP* made clear, however, that time spent *waiting* to “don” protective gear is excluded from coverage under the Fair Labor Standards Act (“FLSA”), and that employers are not required to compensate employees for that waiting time.

The Portal-to-Portal Act, a significant amendment to the FLSA, defines the “workday” and makes certain

work “preliminary or postliminary” to an employee’s principal activities non-compensable. The Court in *IBP* reasoned that because the time spent donning and doffing unique protective gear was “integral and indispensable” to a “principal activity” it therefore itself was a principal activity under the Portal-to-Portal Act. As a “principal activity,” putting on and taking off protective gear both begins and ends the workday. Time spent waiting to take off the gear is compensable because the workday continues until employees remove the gear. Time spent waiting to put on protective gear is not compensable because the workday has not yet begun.

D.O.L. Warning (*Continued from page 1*)

It is important for employers to be aware of the state’s laws regarding employer liability and address them accordingly. In California this means being aware of the .08 legal limit and the ratio of blood alcohol levels per person. Options to decrease exposure to liability include: choosing not to serve alcoholic beverages, limiting the number of drinks per employee, providing a safe ride home for inebriated employees, avoid serving foods which tend to make people thirsty, cutting off the alcohol before the party ends, and/or designating party managers.

Funnies From The Bench

The Court: Is there any reason why you couldn’t serve as a juror in this case?

Potential Juror: I don’t want to be away from my job that long.

The Court: Can’t they do without you at work?

Potential Juror: Yes, but I don’t want them to know that.

Recent Developments

Employee Injured At Work Is Not Entitled to Return Under Modified Duty

On September 29, 2005, a California Court of Appeal in *County of San Luis Obispo v. WCAB*, annulled and remanded a decision of the Workers' Compensation Appeals Board (WCAB). The WCAB had found that an employer unlawfully terminated the employment of a mental health worker after he had been injured at work. The employee's first doctor had stated that he could return to his former job without restrictions, but his subsequent doctor and a chiropractor stated that modifications to his job were necessary. The Court of Appeal held that the employee had failed to show that he was "singled out for disadvantageous treatment," a judicially-created requirement to establish a violation of Labor Code section 132a, and that the employer had showed that it had "a good faith belief" that returning the employee to his former position would endanger him and others.

Employer May Reimburse Expenses Through Higher Salaries and Commissions

On October 27, 2005, a California Court of Appeal in *Gattuso v. Harte-Hanks, Shoppers, Inc.* affirmed a lower court's decision that an employer did not violate the law by compensating an outside salesperson for expenses he incurred in using his own automobile by paying him a higher salary and a higher commission rate than those paid to inside sales representatives. The *Gattuso* court rejected the employee's contention that the employer had violated Labor Code section 2802 holding that the law does not specify any particular method by which an employer must indemnify its employees, permitting an employer to do so through increased compensation.

Employer Held Liable For Sexual Orientation Harassment By Its Supervisor

On November 30, 2005, a California Court of Appeal in *Hope v. California Youth Authority* affirmed a judgment in favor of a gay employee who alleged that he had been subjected to derogatory remarks at work because of his sexual orientation. The *Hope* court held that the California Fair Employment and Housing Act (FEHA) prohibits the harassment of an employee because of his or her sexual orientation in employment and that an employer will be held strictly liable for such harassing conduct engaged in by one of its supervisors.

Announcements

Robert L. Rediger prevailed in a labor arbitration on a grievance filed by the Graphic Communication Union District Council 2 against a printing company in the Bay Area. The employer had laid off an employee who had more seniority than other employees in his classification. The seniority clause of the parties' CBA, however, contained a "relative ability" seniority clause that entitled the employer to assess "the ability and dependability" of employees being considered for a layoff. The CBA provided that "such factors being equal, seniority shall then prevail." In a published decision and award, the arbitrator found that the modified seniority clause contained in the parties' CBA permitted the employer to layoff the grievant rather than employees with more seniority. *American Lithographers and GCIU, DC 2, 121 LA 993(2005) (Reiker, Arb.)*

Jennifer L. Lippi convinced the Department of Fair Employment and Housing (DFEH) to issue a Notice of Case Closure on a Complaint of Discrimination that had been filed by an employee before any investigation was even conducted by the DFEH. A disgruntled employee had alleged that she had been "terminated in retaliation for requesting leave under the California Family Rights Act" (CFRA). The employer, however, did not employ 50 or more persons and was therefore not covered by the CFRA. Accordingly, the DFEH was compelled to conclude that there was "insufficient evidence to prove a violation of the (CFRA)."

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DID YOU KNOW?

While the California Labor Code consists of almost 600 pages detailing the responsibilities of employers to employees, a small section in the Code relates to employees obligations to the employer. For example, Labor Code section 2856 provides that an employee shall substantially comply with all the directions of his or her employer. There are exceptions for circumstances where the compliance would be impossible or unlawful.

Upcoming Events

Sexual Harassment Training For Supervisors – The attorneys of Rediger, McHugh & Hubbert, LLP have created a two-hour program to put your company in compliance with Assembly Bill 1825. The “Sexual Harassment Training For Supervisors” program will be presented at your Sacramento facility or at our law firm, depending on your preference, for a total cost of \$600.00. For pricing outside the Sacramento area or to schedule a training session, call Sara at **(916) 442-0033**, or send an email to **info@rmlaw.net**. (*See page 2.*)

January 6, 2006 – Employment Law “Essentials” for 2006 at the Sutter Club - The attorneys of Rediger, McHugh & Hubbert, LLP will present a half-day seminar covering the employment laws and court decisions that became effective in 2005. Developments in California and Federal employment laws, including statutes and court decisions, model HR forms, sample personnel policies, required posters, notices and brochures, etc. will be provided to attendees. Client cost is \$100.00 for the first person and \$75.00 for each additional person. Continental breakfast and registration begins at 8:30 a.m. (*See page 2.*)

May 9, 2006 – National Business Institute will present a seminar entitled, “California Wage and Hour Update” from 9:00 a.m. to 4:30 p.m. in Sacramento. Robert L. Rediger and Jennifer L. Lippi will join other employment law attorneys and address various wage and hour issues that arise under federal and under California law. Clients of Rediger, McHugh & Hubbert are eligible for a \$50.00 discount of the registration fee by identifying themselves as a client of the firm. Call Jim Lau at NBI at **1 (800) 777-8707 ext. 235** to register.

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555 Capitol Mall, Suite 1540

Sacramento, California 95814

Telephone (916) 442-0033 Facsimile (916) 498-1246

Website: www.sacramentolaborlaw.com

Happy Holidays!