

## HR Articles

May 2017



### EEOC & DFEH Retaliation Claims

Workplace retaliation is the #1 EEOC complaint filed by employees against their employer. This article explains the elements of an EEOC or CA DFEH retaliation claim and list several examples of workplace retaliation, plus suggestions your company can implement to reduce potential claims.

[Link to Full Article](#)

### Summer Heat is Coming Do You have Employees that Work Outdoors?

Were you aware that Cal-OSHA requires employers with employees who work outdoors to implement a **heat illness prevention program**?



This article to help understand the **five-minute "cool down" rest break requirements** to avoid a potential Labor Code penalty.

[Link to Full Article](#)

### Employee Wellness Program

Does your company have an employee wellness program and if yes, does your plan comply EEOC and GINA regulations?



The EEOC has issued rules that set limits on wellness programs that require employees to answer disability-related questions or undergo medical exams, such as health risk assessments or blood pressure checks, to either earn a reward or avoid a penalty.

[Link to Full Article](#)

## HR News Briefs / Alerts

DFEH Updated Required Employee Notice

The required employee sexual harassment brochure issued by the Department of Fair Employment and Housing (DFEH) was recently updated, plus the DFEH added a second required employee notice.

We recommend you download the new brochures and immediately distribute them to your employees. The new brochures can be download via the links below.

[DFEH-185](#)

[DFEH-162](#)

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### Employers Requirement Clarified Required Employee's "Day of Rest"

The law firm of Matthew Callahan posted an article reviewing the recent California Supreme Court case, *Mendoza v Nordstrom* that clarified the meaning of California's "**day of rest**" **statutes**. The court ruled that an employee has the freedom to choose work through a rest day, so long as there is no coercion or penalty by the employer, and that working on a rest day promotes greater flexibility and economic opportunity for employees.

The court went on to say that the day of rest only applies to employees who **work more than six hours on any day in a given workweek**.

[Link to Full Article](#)

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### OSHA Delays Electronic Record Keeping

The Occupational Safety and Health Administration (OSHA), which had issued a rule requiring the electronic posting of such information for most employers as of July 1st, recently announced that the electronic filing deadline will be postponed for an undetermined period of time.

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### Use of Criminal Background Check in Employment Decisions

The law firm of Ford Harrison posted an article that reviewed the recent California's Department of Fair Employment and Housing (DFEH) criminal background regulation. The regulation imposes additional burdens on employers' use of criminal background checks in employment decisions.

The new regulations are expected to go into effect on July 1, 2017 and apply state-wide. Ultimately, the regulations will make it **difficult for any employer in California to maintain no-hire policies for persons with criminal convictions**.

Employer must justify their hiring policy or practice by demonstrating that it bears "a demonstrable relationship" to successful performance on the job and in the workplace. The regulations do provide two methods for an employer to meet these requirements:

[Link to Full Article](#)

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## Reminder

If an employer provides health benefits under any group health plan, California Govt. Code 12945 requires an employer to continue and maintain group health plan coverage for female employees taking Pregnancy Disability Leave (PDL) for up to four months. The group health plan coverage and premiums **must be the same as if the employee continued working during her leave.**

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### Employers: Don't just say "NO" to a ADA & FMLA Leave Request

In a recent case, outlined by attorney Marjory Robertson, a Wells Fargo employee with epilepsy, asked Human Resources if she could have time off because she was concerned that the stress of work might prompt her to have a seizure. HR responded by saying that her epilepsy was not a disability and that she did not qualify for leave under the FMLA.

The employee appealed the decision to her manager who also denied her request but told her she might be able to take time off in three months. The employee resigned and filed an ADA (Americans with Disability Act)

The court ruled Employers may ask for medical documentation for both ADA reasonable accommodation requests and FMLA leave requests. However, they must do so at the proper time and in the proper way. When an employee asks for a reasonable accommodation or time off for medical reasons, **employers should ensure that they comply with FMLA notice requirements and engage in the ADA good faith interactive process.** Just because an employer may not want to allow an accommodation, it should not reply with a visceral denial. Rather, employees should ensure that they follow appropriate legal processes.

[Link to Full Article](#)

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Do you have an HR question or require tactical and strategic HR support or planning? Call today for a no obligation consultation.

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