

# LANDEGGER & BARON

A PROFESSIONAL CORPORATION

## ATTORNEYS AT LAW

EMPLOYMENT AND LABOR LAW  
AND RELATED LITIGATION  
ON BEHALF OF MANAGEMENT

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August 9, 2004

## Re: The "Bounty Hunter Law" Update

Dear Clients and Friends:

Good news, bad news. The good news is that the Labor Code Private Attorneys General Act of 2004 has been amended with some beneficial provisions for employers. These amendments were a product of negotiations between Governor Schwarznegger and the legislature during the recent budget process. The bad news is that the changes are not enough and employers are still faced with the prospect of significant legal challenges concerning compliance with California law. Your company must continue to make compliance with California law a top priority and continue to put your energy into prevention of employment-related disputes.

It is my opinion that the changes will not stop the attorneys representing the employees. Although the new law has eliminated the opportunity for attorneys to make money if a company does not have all of the proper postings or notice requirements of the Labor Code (other than mandatory payroll or workplace injuries); these violations will be subject to enforcement by the Workforce Development Agency. Other provisions retained in this law will still encourage plaintiff's attorneys. For example, the new law requires any aggrieved employee to first submit the violation to the Workforce Development Agency and only if the employer does not "cure" the violation or if the Agency declines to investigate can a civil action be filed. I think that this legislation will delay civil actions but will not prevent them. All aggrieved employees must be made whole under this legislative scheme if you want to avoid litigation. Example: Your company properly classified employees as exempt and the attorneys for the aggrieved employees disagree. If you are not willing to agree that they are mis-classified and willing to pay all overtime and penalties demanded, you will still end up in court. Example: Your company provides rest periods according to California law and the attorneys for the aggrieved employees claim that employees do not receive their rest periods and you owe a one hour penalty for every employee for the last four years. Unless you agree and pay, you will end up in court. Carl's Jr. just settled its California overtime litigation for \$9 Million while denying any liability citing the expense and distraction of protracted litigation.

The new law allows the courts to award a penalty less than the maximum penalty amount “if based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” What does that mean? We will be litigating these terms for the next few years. Bottom line, if you are found to be in violation, you are at the mercy of the Judge assigned to the cases. Even if the Judge reduces the penalty you are still responsible for the attorneys fees of the attorney for the aggrieved employee and your own defense costs.

**THE FOUR STEPS WE RECOMMEND TO PROTECT YOUR COMPANY.**

First, Labor Code Section 431 has been repealed so that you no longer need to file your employment application with the Division of Labor Standards Enforcement. Last month, I provided you with an employment application in compliance with state and federal law. I encourage you to change your application if you have not done so. If you need another copy, please contact our office.

Second, enclosed find a sample New Hire Checklist which lists all of the mandatory and optional forms and documents every employee should receive at the time of hire. If you have less than 50 employees, you are not subject to the state and federal family care leave handouts listed. Please adopt this Checklist or modify your existing checklist.

Third, many of you have asked for a sample non-discrimination policy. Enclosed find a sample Employee Relations Policy which brings you into partial compliance with California law concerning sexual harassment and a sample Physical and Mental Disability Policy which brings you into compliance with your responsibility to make a reasonable accommodation for a disabled employee.

Fourth, audit your wage, hour and payroll practices including rest periods, meal periods, overtime and exempt/non-exempt status.

As always, if we can be of any further assistance to you concerning your employment law needs, please feel free to contact us.

Very truly yours,

/s/

Alfred J. Landegger

AJL:bam  
Enclosures

## NEW HIRE CHECKLIST

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The following items must be signed and contained in every new hire employee packet. If a document does not apply, please write N/A. Please initial that the document has been presented to the employee and signed.

Employment Application (completed, dated and signed by applicant)	<b>(Optional)</b>	_____
Post-Hire Employee Data Sheet	<b>(Optional)</b>	_____
Federal Form W-4 - Employee Withholding Allowance	<b>(Mandatory)</b>	_____
California State Form DE-4 Employees Withholding Allowance Certificate	<b>(Mandatory)</b>	_____
I-9 Form - (completed by applicant and company representative)	<b>(Mandatory)</b>	_____
Voluntary Information Form	<b>(Optional)</b>	_____
Authorization to obtain Investigative Report	<b>(Optional)</b>	_____
Notification of Request for Investigative Consumer Report	<b>(Optional)</b>	_____
Workers' Compensation Benefits Statement and Physician Election Form (English and Spanish/Acknowledgment)	<b>(Mandatory)</b>	_____
State Disability Insurance Booklet-DE2515 (English/Spanish)	<b>(Mandatory)</b>	_____
EDD For Your Benefit Booklet-DE2320	<b>(Mandatory)</b>	_____
Family Care and Medical Leave and Pregnancy Disability Leave Notice (State)	<b>(Optional)</b>	_____
Family and Medical Leave Act of 1993 (Federal)	<b>(Optional)</b>	_____
California Paid Family Leave-DE2511 (English and Spanish)	<b>(Mandatory)</b>	_____
Department of Fair Employment and Housing Sexual Harassment Pamphlet (English and Spanish)	<b>(Mandatory)</b>	_____
Company's Sexual Harassment Policy with Acknowledgment	<b>(Mandatory)</b>	_____
Company's Drug and Alcohol Policy with Acknowledgment	<b>(Optional)</b>	_____
Employee Handbook	<b>(Optional)</b>	_____
Employee Handbook Acknowledgment of Receipt	<b>(Optional)</b>	_____
Insurance Premium Authorization	<b>(Optional)</b>	_____
Unearned Vacation Agreement	<b>(Optional)</b>	_____
Supplies/Uniform Cost Authorization	<b>(Optional)</b>	_____
Acknowledgment of Receipt of Mandatory Documents	<b>(Optional)</b>	_____

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Supervisor's Signature

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Employee Name

## **EMPLOYEE RELATIONS POLICY WITH ACKNOWLEDGMENT**

### **A. POLICY AGAINST DISCRIMINATION.**

The Company is committed to providing a work environment that is free of discrimination. In keeping with this commitment, the Company maintains a strict policy prohibiting unlawful discrimination. This policy applies to all employees of the Company, including supervisors and non-supervisory employees. The policy also applies to non-employees of the Company including clients, customers, vendors and any other person doing business with the Company.

All aspects of employment with the Company will be governed on the basis of merit, competence and qualifications and will not be influenced in any manner by an individual's race, ancestry, color, religion, national origin, marital status, sex (including sexual harassment and gender identity), sexual orientation, disability (physical or mental including HIV/AIDS diagnosis), medical condition (cancer and genetic characteristics), age or exercising the right to any legally provided leave of absence in the application of any policy, practice, rule or regulation.

All decisions made with respect to recruiting and hiring, evaluations and promotions for all job classifications will be based solely on individual qualifications as related to the requirements of the position. Likewise, all other personnel matters such as compensation, benefits, transfers, lay offs, training, educational opportunities and programs will be administered free from any illegal discriminatory practices.

### **B. POLICY AGAINST HARASSMENT, INCLUDING SEXUAL HARASSMENT.**

The Company is also committed to providing a work environment that is free of harassment, including sexual harassment.

Sexual harassment includes:

1. Unwanted sexual advances;
2. Offering employment benefits in exchange for sexual favors;
3. Making or threatening reprisals after a negative response to sexual advances;
4. Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters;
5. Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes;
6. Verbal sexual advances or propositions;
7. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; and

8. Physical conduct: touching, assault, impeding or blocking movement.

**C. COMPLAINT AND INVESTIGATION PROCEDURE.**

Any form of discrimination or harassment, including sexual harassment, is absolutely prohibited. Any incident of possible discrimination or harassment should be brought immediately to the attention of the President, Chief Executive Officer, or the Human Resources Officer who will thoroughly investigate the matter in confidence. After reviewing all the evidence, the Company will make a determination concerning whether reasonable grounds exist to believe that harassment has occurred.

Disciplinary action, up to and including discharge, will be taken against any employee who is found to have engaged in harassment.

No employee shall be subjected to any form of retaliation for reporting any violation of this policy truthfully and in good faith.

**HARASSMENT BY NON-EMPLOYEES**

In addition, the Company will take all reasonable stages to prevent or eliminate sexual harassment by non-employees including customers, clients and suppliers who are likely to have workplace conduct with our employees.

**EMPLOYEE RELATIONS POLICY ACKNOWLEDGMENT**

I have read and received a copy of the Company's Employee Relations Policy, including the policies against discrimination and harassment, including sexual harassment, and fully understand my obligations and responsibilities as outlined therein.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

## **PHYSICAL AND MENTAL DISABILITY POLICY**

\_\_\_\_\_The Company is an equal opportunity employer. This includes all individuals with a physical or mental disability. The Company will make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant for employment or a current employee of the Company. The only limitation as to the Company's commitment to providing reasonable accommodation would be if an undue hardship would result to the Company.

Any applicant or employee who requests an accommodation in order to perform the essential functions of the job should contact the Human Resources Department and request such an accommodation. The employee must provide the details as to what accommodation is needed to perform the job. The Company will then review the situation to establish and identify what accommodation, if any, will help to eliminate the limitation of the employee's ability to perform the job.

If you believe that you have been subjected to discrimination as a result of any known physical or mental disability, please refer the matter to the Human Resource Department for investigation. Your complaint must be specific and should include all relevant information so that a thorough investigation may be conducted. The Company will immediately investigate the complaint, in confidence, to determine if discrimination has occurred. Upon conclusion of the investigation, the Company will take the necessary steps to remedy the situation. The Company will not tolerate any retaliation by any of its employees against any employee who files a complaint or participates in an investigation regarding a complaint of discrimination.