



the California Employer's report

the Information Newsletter

for Today's Employer

CALIFORNIA EMPLOYERS ASSOCIATION

Providing Human Resource Solutions for Employers Since 1917

Q & A: WORKPLACE PANDEMIC FLU - WAGE & HOUR GUIDELINES

The Department of Labor's Wage and Hour Division has put together "Question and Answer" documents for both the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA) relating to the Pandemic Flu. These documents provide information on common issues when employees get the flu and its affect on wages and hours worked and job-protected leave.

Pandemic Flu and the FLSA

Q. May an employer encourage or require employees to telework (i.e., work from an alternative location such as home) as an infection control strategy?

A. Yes, an employer may encourage or require employees to telework as an infection-control strategy, based on timely information from public health authorities about pandemic conditions. Telework also may be a reasonable accommodation. Of course, employers must not single out employees either to telework or



to continue reporting to the workplace on a basis prohibited by any of the EEO laws. See EEOC Fact Sheet on Work at Home/Telework as a Reasonable Accommodation at <http://www.eeoc.gov/facts/telework.html>.

Q. Can an employee be required to perform work outside of the employee's job description?

A. Yes, the Fair Labor Standards Act (FLSA)

does not limit the types of work employees age 18 and older may be required to perform. However, there are restrictions on what work employees under the age of 18 can do. This is true whether or not the work asked of the employee is listed in the employee's job description.

As part of your pre-pandemic planning, you may want to consult your regional director if you expect to assign employees work outside of their job description during an influenza pandemic. You may also wish to consult bargaining unit representatives if you have a union contract.

Pandemic Flu and the FMLA

Q. Can an employee stay home under Family and Medical Leave Act (FMLA) to avoid getting pandemic influenza?

See Guidelines - Page 7

QUESTIONS FROM SANTA'S HR REP AND LEGAL TEAM



1. Are Santa's elves entitled to meal and rest periods?
2. Can an elf be denied a vacation request during heavy manufacturing periods?
3. Are the reindeer considered full-time employees or independent contractors?

4. Are the milk and cookies provided to Santa considered a taxable benefit? Is this a meal and/or rest period if he eats them? What if he doesn't eat them?
5. Are the reindeer exempt from overtime during their delivery run? What if they cross timelines/datelines?
6. If one of the reindeer suffer frostbite, are they eligible for workers compensation?
7. Does forcing Santa to wear red velvet robes constitute a case of discrimination?
8. If Mrs. Claus pets the reindeer, is that considered harassment?
9. If you behaved all of this year and still don't get what you want from Santa, can you retaliate?
10. Can Santa just recruit reindeer or must he accept applications from moose too?

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A MESSAGE FROM KIM ...

STIMULUS HELP IS OUT THERE – GO GET IT!

One of California's best kept secrets for businesses is your local Workforce Investment Board (WIB)! CEA is working closely with WIB's throughout the state to help employers stay in business by connecting employers to their local career centers. Every county in California is represented by at least one career center, and many have multiple centers, which have received stimulus dollars through the Workforce Investment Act.

As an employer, you are eligible to take advantage of the employer and employee programs housed in these career centers. These programs provide businesses with a variety of benefits including free training, free consulting and some even pay a percentage of the salary for eligible employees!

History

The purpose of the Workforce Investment Act (WIA) is to provide workforce investment activities that increase the employment, occupational attainment, and retention and earnings of participants, **which will improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the nation's economy.**

Funding

WIA youth funds provide economically disadvantaged youth with training and other services to provide them with the skills necessary to obtain unsubsidized employment or enroll in a qualified apprenticeship program.

WIA adult funds provide services to all adults, plus specialized training and other services to economically disadvantaged adults facing serious barriers to employment.

Dislocated worker funds provide rapid response services to workers affected by plant closures and layoffs, industry retraining, and readjustment services.

Reaching Out

Need some new employees and want to get 50% of their wages paid by the government? Give your local one-stop career center a call. Need some LEAN manufacturing or other training programs for your employees? Pick up the phone. Interested in having a business consultant come on-site to improve your productivity, reduce overhead costs or analyze your business model utilizing stimulus dollars? Your career center may be able to help!

For more information on the nearest career center in your area, please give CEA a call. We can answer more questions for you and connect you with your local WIB, or you can go directly to the WIB website at: http://www.cwib.ca.gov/local_boards/local_workforce_investment_associations.

At CEA, we will continue to stay on top of employer opportunities, such as this stimulus money, and bring you more information on new programs and old programs (you may not have heard about) that can assist you in running your business more efficiently. By enhancing your productivity, you stay in business, your employees keep their jobs and everyone comes out a winner!

Here's looking forward to a better economy in 2010!

Executive Vice President
 California Employers Association

A GOSSIP-FREE WORKPLACE



Gossip is the primary mechanism for communicating and spreading negativity. Gossip is a very destructive, hurtful, and

divisive form of communication that often permeates the workplace. There are employees that take great pleasure and spend a great deal of time gossiping and spreading rumors. These individuals often participate in gossiping with other employees because they believe it increases their importance in the workplace and builds their self-esteem.

A common misconception by employers and managers is that gossip is a fact of life and inherent in any business. However, as a supervisor or leader, it is YOUR responsibility to fix or stop any problems that result in a disruption in the workplace or that may cause a negative/hostile work environment.

Gossiping behavior can negatively impact the workplace in the following ways:

- Gossip results in misunderstandings that quickly lead to conflict, and sometimes strain relationships to the point that some employees can no longer work together effectively.
- Gossip breaks down the trust level within the group, which results in employees second-guessing each other and ultimately running to the supervisor to clarify the directions or instructions, or to settle the differences that will arise.
- Gossip is the death of team work as the group breaks up into small "clicks," and

employees start refusing to work with others.

- Gossip results in the supervisor spending an enormous amount of time trying to figure out who said what to whom, so the workgroup can accomplish the task(s) assigned.
- Gossip sometimes is so severe that the good employees may leave the workgroup.
- Gossip that causes an employee to leave the workplace can result in a hostile work environment lawsuit.

How to Stop Gossip

It is likely that everyone has participated in it at one time or another. The main way to stop any bad behavior is to educate those who are ignorant on the subject so that people realize the negative effects it has in the office and to promote a feeling of well-being and consideration.



Gossip can be defined in a variety of ways, but it is generally language that causes a person harm, pain, or confusion, especially when used outside the presence of another for whom it is intended.

Creating a Gossip-free workplace, follow these steps:

1. As a member of management, set the example and refuse to listen to gossip on any level.
2. Schedule a meeting to talk about how you want to stop gossip in your workplace. Define gossip. Some people may not realize they are gossips. Some simply see it as chatting and

exchanging information. Let them know that gossip includes rumors that are personal and intimate in nature and seem sensational or emotionally exciting.

3. Establish a zero tolerance gossip policy. Include this policy in your employee handbook and new hire orientation. Decide on and communicate consequences. An employee caught spreading gossip may receive disciplinary action up to and including termination of employment.

4. Give your employees strategies for curbing gossip. Tell them to walk away when someone else wants to gossip. Fires that are not fanned soon burn out.

5. Explain that gossip in the workplace is not tolerated on a personal nor a professional level. When gossip about the company creates a disruption in the workplace, management will get involved. If your company goes through hard times, communicate openly with your people.

6. Establish an open door policy. Explain to your employees, "Our policy is, if you have a problem with Jane, go and talk to Jane about it. Don't tell me." This should be everyone's mantra in the company!

7. Communicate regularly and consistently with employees about what's going on in the workplace. If employees don't have good information from the supervisor about what is going on, they will make it up in the form of speculation and "gossip."

Make communicating with your employees an assignment every day. The added attention and communications will work wonders in stopping gossip and increasing employee morale and productivity!

FACTORING: A CASH FLOW SOLUTION

As we close 2009 and turn our attention to 2010, the availability of steady working capital will continue to be a challenge for most businesses. We have entered into a new era where companies have to do more with less, and are progressively basing more operational decisions on access to cash flow. In the coming year, alternative methods of financing will be invaluable for many small and mid-sized businesses, whose access to conventional lending have dried up.

Factoring is one alternative becoming increasingly popular among businesses that are faced with cash flow needs. **Factoring**

is the purchase of secured and reliable accounts receivables, which helps businesses free up capital immediately and focus on business growth and other operational functions.

In an ideal world, invoices are paid immediately, but quite often they are paid between 30 to 120 days. The turbulent economic conditions are causing more and more businesses to slow pay their invoices. This burden of companies extending credit to their customers starves many businesses of essential capital, which often leads to huge cutbacks in production output, or staff.



If your business relies heavily on cash for its day to day operations, factoring may be the

See Factoring - Page 6

Member Spotlight and Milestones

GUNTHERS QUALITY ICE CREAM

NAME: Richard and Marlena Klopp

TITLE: Owners

DESCRIPTION OF COMPANY: Ice cream company; manufacturers of homemade premium ice cream.

FOUNDED: 1940

SOURCE OF STARTUP CAPITAL: Business was opened in 1940. Rick had the opportunity to buy it at the age of 27 after being in the ice cream business since the age of 16.

BACKGROUND: Rick and Marlena married in 1980 and have been running the business together.

REASON FOR STARTING THE BUSINESS: We did not start the business, but we have had an amazing opportunity to keep Gunthers alive!



REFLECTIONS

BIGGEST PLUS OF OWNERSHIP: Self-satisfaction.

BIGGEST DRAWBACK OF OWNERSHIP: Long hours and never being able to put the business out of our minds.

GREATEST STRENGTHS: Knowing our business and what works; staying positive through both good and hard times.

BIGGEST WEAKNESS: Ice cream. Even though we deal with it all day long, we still love it.

SMARTEST MOVES: Keeping Gunthers to one shop - not over expanding.

TOP SOURCES OF INSPIRATION: We are an inspiration to each other. Our biggest advice comes from our customers.

MOST CHALLENGING TASK: Managing young employees. Although challenging, it can also be very satisfying when the work ethics taught to them are learned.

FAVORITE TASK: Customer service.

SOURCE OF SUPPORT OR ADVICE: Keeping up with the regulations and changing laws of doing business in California.

FIVE YEAR VISION: To see Gunthers still going strong.

PERSONAL

RESIDENCE: Herald, CA

FAMILY: Daughter Mary, Son-in-law Mike, Grand kids Peyton (13), Bryce (11), and Jada (7).

FAVORITE ACTIVITIES: Riding motorcycles and camping.

WHAT I'M MOST PROUD OF: Our accomplishments together.

CEA MEMBER SINCE 2001

How HAS CEA HELPED YOUR BUSINESS?

CEA has been our biggest support system. We call Bruce Murray whenever we have to address a situation. He always gives us the advice we need and sets our minds at ease. We feel CEA is a big asset to our business and a necessity in doing business.

NEWEST MEMBERS AND MILESTONES!

Bowers Ambulance - Long Beach, CA
Evan Vogel Orthodontics - Fremont, CA
Habelt's Auto Garage - San Francisco, CA

Ro's Precise Painting, Inc. - Sanger, CA
Strategic Staffing Solutions - San Francisco, CA
Victorville Speedwash, Inc. - Victorville, CA

We appreciate your membership with CEA through the years!

Friedman Brothers Hardware - 49 years
Rafael Convalescent Hospital - 42 years
Superior Sanitation - 38 years
Jack's Carwash - 32 years

PrideStaff - 28 years
Davison Iron Works, Inc. - 26 years
CMA Dishmachines - 26 years
Sunnyside Country Club - 25 years

BONUS AND OVERTIME CALCULATIONS



Many members may offer employees some sort of bonus in the next month. Do you count this as income when calculating an hourly or non-exempt employee's "regular rate" for determining overtime pay for hours worked over 40 in the workweek?

The Fair Labor Standards Act (FLSA) spells out what types of payments may or may not be excluded in computing an employee's regular

rate. In general, discretionary bonuses, gifts, and employer payments to certain profit-sharing, thrift and savings plans may be excluded.

A bonus is discretionary when it is an unexpected, one-time payment that is not part of a defined bonus plan with specific criteria. For example, if your General Manager comes to you on December 21st and says, "As a reward for your hard work this year, here's \$500," this would be a truly discretionary bonus.

A bonus is non-discretionary when it is part of an announced bonus plan. For example, if your company says that employees will receive a \$500 bonus if the company makes a \$50,000 profit this year, this would be non-discretionary.

Awards for Performance. Section 778.331 of the FLSA describes how to handle awards for performance on the job. It states that

"where a prize is awarded for the quality, quantity or efficiency of work done by the employee during his customary working hours at his normal assigned tasks, it is obviously paid as additional remuneration for employment. Thus prizes paid for cooperation, courtesy, efficiency, highest production, best attendance, best quality of work, greatest number of overtime hours worked, etc., are part of the regular rate of pay."

As such, nondiscretionary bonuses like attendance bonuses, pay-for-performance bonuses, and bonuses given in lieu of an annual pay increase must normally be added to the employee's regular pay in order to properly calculate the regular rate and the overtime rate.

One exception is for bonuses that are paid as a percentage of total earnings, which provide for the simultaneous payment of overtime due on the bonus.

WAITING TIME PENALTIES - THE BIG HIT

So you received a notice from the Labor Commissioner telling you that an ex-employee has made a complaint that you didn't pay him correctly. It's been over thirty days since this guy was terminated. The claim is just for one hour on his final day, and he was only getting paid \$12.00 an hour. Big deal you say. But then you look further down the notice and find out that another box is checked that calls for "additional wages accrued pursuant to Labor Code Section 203 as a penalty of \$96.00 per day for an indeterminate number of days not to exceed thirty days."

This is referred to as the "waiting time penalty" and almost always exceeds the amount claimed for the actual violation – in this case the potential penalty is \$2,880 for failure to pay an additional \$12.00 of wages – determined by multiplying the hourly wage by 8 hours and then by 30 days. That's the "Big Hit!"

Sometimes employers miss this "Big Hit" and fight on. Fighting this claim could be a costly mistake.

CEA Saves The Day

In a recent case handled by CEA for a Member, an ex-employee made a number of claims, including the allegation that he never received a meal period at any time during his

employment, and a few other issues which all tolled, equaled \$1,836.00 not including the "Big Hit" waiting time penalties of nearly \$3,000.

There were four separate issues that the Member would have to prevail on in order to escape the "Big Hit." While working with the Member in preparation for the formal hearing, it was determined that there was no 100% guarantee that we could prevail on all the issues. In fact, if the Hearing Officer had determined that we failed on any one issue – perhaps failure to pay just one hour of wages – the Member would also face the "Big Hit" of \$3,000 plus interest.

Settlement

The Member had attempted to settle short of going to a formal hearing, but the ex-employee wasn't interested in any offer less than \$5,000, which was a bit more than the total at stake. The negotiations went nowhere. Months later we arrived at the Labor Commissioner's office for the formal hearing. The Hearing Officer asked if there had been an attempt to settle and we said yes, but the discussions were not fruitful. Asked if we would like to try again before starting the hearing, we said yes. Again the ex-employee wanted \$5,000. After about fifteen minutes of negotiation, the ex-employee finally agreed



to accept \$1,000 as full settlement.

Moral of the Story

Although costly, the amount of the settlement was far less than even the waiting time penalties, and both parties were satisfied. The lesson here is that it can be very costly if you focus solely on the potential of an adverse decision without taking into consideration the "Big Hit" that gets applied even if it's determined that an employer owes as little as one dollar.

Bruce Murray
CEA Regional Director

SAFETY CORNER: OSHA REPORTS ON TOP 10 SAFETY VIOLATIONS FOR 2009



On October 27, 2009, the Occupational Safety and Health Administration (OSHA) revealed the preliminary top 10 most-frequent workplace safety

violations for 2009 as part of a presentation at the NSC's annual Congress & Expo. The number of top 10 violations has increased almost 30 percent over the same time period in 2008, reported the agency.

The workplace violations are:

Scaffolding: 9,093 violations. Scaffold accidents most often result from the planking or support giving way, or to the employee slipping or being struck by a falling object.

Fall Protection: 6,771 violations. Any time a worker is at a height of four feet or more, the worker is at risk and needs to be protected. Fall protection must be provided at four feet in general industry, five feet in maritime and six feet in construction.

Hazard Communication: 6,378 violations. Chemical manufacturers and importers

are required to evaluate the hazards of the chemicals they produce or import, and prepare labels and safety data sheets to convey the hazard information to their downstream customers.

Respiratory Protection: 3,803 violations. Respirators protect workers against insufficient oxygen environments, harmful dusts, fogs, smokes, mists, gases, vapors and sprays. These hazards may cause cancer, lung impairment, other diseases or death.

Lockout-Tag out: 3,321 violations. "Lockout-Tag out" refers to specific practices and procedures to safeguard employees from the unexpected startup of machinery and equipment, or the release of hazardous energy during service or maintenance activities.

Electrical (Wiring): 3,079 violations and **Electrical:** 2,556 violations. Working with electricity can be dangerous. Engineers, electricians and other professionals work with electricity directly, including working on overhead lines, cable harnesses, and circuit assemblies. Others, such as office workers and sales people, work with electricity indirectly and may also be exposed to

electrical hazards.

Ladders: 3,072 violations. Occupational fatalities caused by falls remain a serious public health problem. The US Department of Labor (DOL) lists falls as one of the leading causes of traumatic occupational death, accounting for eight percent of all occupational fatalities from trauma.

Powered Industrial Trucks: 2,993 violations. Each year, tens of thousands of injuries related to powered industrial trucks (PIT), or forklifts, occur in US workplaces. Many employees are injured when lift trucks are inadvertently driven off loading docks, lifts fall between docks and an unsecured trailer, they are struck by a lift truck, or when they fall while on elevated pallets and tines.

Machine Guarding: 2,364 violations. Any machine part, function, or process that may cause injury must be safeguarded. When the operation of a machine or accidental contact injures the operator or others in the vicinity, the hazards must be eliminated or controlled.

Source: National Safety Council
<http://www.nsc.org>

FACTORING - CONTINUED FROM PAGE 3



answer. Instead of waiting 30, 60 or 90 days to be paid by a customer, factoring helps you obtain the money you need quickly, and only at a small discount of the invoice value.

Once approved, cash can be obtained for invoices normally in 24 hours or less, and as often as the business needs. Companies no longer have to depend on the conversion of accounts receivable to cash from the actual payment of their customers. It is a significant source of financing for many companies that depend on fast billing turnaround.

Any business that invoices customers for payment can use factoring services, and by freeing up capital, businesses can stop worrying about collecting money and focus on other important things such as paying

vendors, making payroll and purchasing necessary equipment.

There are also advantages to using factoring than traditional sources of funding. Bank loans place debt on a balance sheet and charge you interest. Factoring companies by contrast do not lend money, but rather purchase your invoice as an asset, putting money in your pocket without the obligation of paying it back.

When businesses need working capital quickly, factoring is a viable and powerful resource. As we continue to deal with the fiscal pressures of this challenging economy, more and more businesses should turn to factoring for relief.

Don D'Ambrosio is the president and CEO of Oxygen Funding Inc. The company provides accounts receivable financing to businesses nationwide through its wholesale and retail networks. For a free quote, please call 800.790.3419 or visit the company's website at www.oxygenfunding.com.

COST OF LIVING

Consumer Price Indexes *

ALL U.S. CITIES	OCT 2008	SEP 2009	OCT 2009
All Urban Consumers	216.6	216.0	216.2
Urban Wage Earners	212.2	211.3	211.5

* For complete consumer price indexes, pacific cities, and U.S. city average, go to: <http://www.employers.org/resources/index.html>.

H1N1 PROTECTION



The Department of Labor's Occupational Safety and Health Administration (OSHA) has issued commonsense fact sheets that employers and employees can use to promote safety during the current

H1N1 influenza outbreak.

The fact sheets inform employers and workers about ways to reduce the risk of exposure to the 2009 H1N1 virus at work. Separate fact sheets for health care workers, who carry out tasks and activities that require close contact with 2009 H1N1 patients, contain additional precautions.

The facts sheets are available on OSHA's "Workplace Safety and H1N1" website, which provides information appropriate for all workplaces and more extensive guidance for those involved in higher risk health care activities. The fact sheets are advisory in nature and informational in content.

As new information about the 2009 H1N1 virus becomes available, these workplace fact sheets will be updated. Employers and workers should review OSHA's website often to ensure they have the most up-to-date information when making decisions about their operations and planning.

For more information about the agency, visit <http://www.osha.gov>.

CEA TRAINING SCHEDULE



Employer Forums

FRESNO

12:00pm - 1:30pm

2010 Labor Law Update - 1/26
Pregnancy Disability Leave - 2/23
OSHA/IIPP - 3/30
Wage & Hour Laws - 4/27
Managing Absenteeism - 5/25
CA Leave Laws - 6/29
Workplace Investigations - 8/31
Employee Handbooks - 9/28
Conflict Management - 10/26
Drug & Alcohol Abuse - 11/16

MODESTO

9:00am - 10:30am

2010 Labor Law Update - 1/19
OSHA/IIPP - 3/16
Wage & Hour Laws - 4/20
CA Leave Laws - 6/15
Prevailing Wage - 7/20
Employee Handbooks - 9/21

SACRAMENTO

12:00pm - 1:30pm

2010 Labor Law Update - 1/12
Wage & Hour Laws - 4/13
CA Leave Laws - 6/8
Employee Handbooks - 9/14
CEA Annual Conference - 10/26

SAN FRANCISCO

9:00am - 10:30am

2010 Labor Law Update - 1/12
Wage & Hour Update - 4/6
CA Leave Laws - 6/1
Employee Handbooks - 9/14



Webinars



WEBINAR WEDNESDAYS

12:00 - 1:00pm

A One-hour, interactive training from the convenience of your office or home! Just dial in/log on, listen and ask questions.

All materials and information are e-mailed in advance.

2010 Labor Law Update - 1/13
Pregnancy Disability Leave - 2/10
OSHA/IIPP - 3/10
Wage & Hour Laws - 4/14
Managing Absenteeism - 5/12
CA Leave Laws - 6/9
Prevailing Wage - 7/14
Workplace Investigations - 8/11
Employee Handbooks - 9/8
Conflict Management - 10/13
Compensation Benefits - 11/10
HR Answers Now - 12/8

Cost:

CEA Members & Affiliates - \$45
Non-members - \$55

To register or for location and topic information, go to www.employers.org/calendar-of-events or call (800) 399-5331.



The use of this seal is not an endorsement by the HR Certification Institute of the quality of the program. It means that this program has met the HR Certification Institute's criteria to be pre-approved for recertification.

GUIDELINES - CONTINUED FROM PAGE 1



A. The Family and Medical Leave Act (FMLA) protects eligible employees who are incapacitated by a serious health condition, as may be the case with the flu where complications arise, or who are needed to care for covered family members who are incapacitated by a serious health condition. Leave taken by an employee for the purpose of avoiding exposure to the flu would not

be protected under the FMLA. Employers should encourage employees that are ill with pandemic influenza or are exposed to ill family members to stay home and should consider flexible leave policies for their employees in these circumstances.

Q. Is an employer required by law to provide paid sick leave to employees who are out of work because they have pandemic influenza, have been exposed to a family member with influenza, or are caring for a family member with influenza?

A. Federal law does not require employers to provide paid leave to employees who are absent from work because they are sick with pandemic flu, have been exposed to someone with the flu or are caring for someone with the flu. Certain state or local laws may have different requirements, which should

be independently considered by employers when determining their obligation to provide paid sick leave. If the leave qualifies as Family and Medical Leave Act protected leave, the statute allows the employee to elect or the employer to require the substitution of paid sick and paid vacation/personal leave in some circumstances. Employers should encourage employees that are ill with pandemic influenza to stay home and should consider flexible leave policies for their employees.

To see both documents (Pandemic Flu and the Fair Labor Standards Act: Questions and Answers PDF and/or Pandemic Flu and the Family and Medical Leave Act: Questions and Answers PDF), go to <http://www.dol.gov/whd/healthcare/h1n1.htm>.



LEGAL INSIGHT FROM DAVE: ACCESS TO PERSONNEL FILES

Q. What are we required to reveal to employees and ex-employees who are seeking access to their personnel files?

A. An employee's access to their personnel file and other records is generally governed by two separate code sections within the California Labor Code. First of all, California Labor Code Section 432 requires employers to provide employees copies of any document the employee signed that relates to his or her obtaining or holding of employment, upon the employee's request. **Essentially, employees are entitled to copies of any document they signed, if they request them.**

Section 1198.5 of the Labor Code addresses the situation when an employee may inspect his or her personnel file. That code section states that in general, an employee is entitled to review and inspect all records relating to his or her performance or to any grievance concerning that employee. The employer is required to make the files available to the employee at reasonable intervals and at reasonable times. However, the employer is not required to permit the employee to inspect the file during times when the employee is expected to be performing services for the employer. **Generally, employees would be allowed to inspect their file during their break or at another time when the business is open but the employee is not actually working.**

In addition, there are limitations on the types of documents the employee is allowed to inspect. The employer is not required to allow employees to review documents related to the investigation of a possible criminal investigation, letters of reference, or documents that were obtained prior to the employee's employment, that were prepared by an identifiable examination committee, or that were obtained in connection with a promotional examination.

Finally, if the employee is subject to the Public Safety Procedural Bill of Rights, there are additional requirements and protections available to those employees. If your employee is subject to that bill of rights, contact your CEA Regional Director for further assistance.

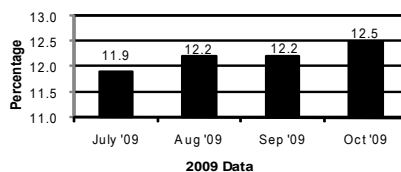
These rules apply equally to current and former employees. However, the inspection of personnel files for former employees is at the discretion of the employer, but must occur at a reasonable time and place.



Return Service Requested



December 2009



*Seasonally adjusted. (The removal of the effects of regular periodic events such as weather condition, holidays, and school schedules from labor force and payroll employment data.) Source: LMID

Advertising rates & information are available by calling (800) 399-5331. CEA reserves the right to reject any advertisement.

The California Employer's report is an opinion and discussion magazine for CEA membership. Opinions expressed by authors are their own, and not necessarily those of the CEA. CEA reserves the right to edit all contributions for clarity and length, as well as reject any material submitted.

The California Employer's Report is published monthly by CEA, 1451 River Park Drive, Suite 121, Sacramento, CA 95815, 1-800-399-5331.

This report is intended to inform employers of current development in labor law and employer/employee related issues. It is not intended to provide legal advice to deal with subjects addressed in this edition. Information is gathered from sources believed to be reliable. CEA, however, cannot be responsible for its accuracy.