



Human Resources Committee

Chair: Cory King
Fine, Boggs & Perkins

Vice Chair: Mario Malacara
Service King



To Appeal... or not to Appeal?

**Presentation by
Susan Crosby, President
Corporate Cost Control
Dallas, Texas
August 2, 2006**



Unemployment Claims: To Appeal... or not to Appeal?

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Unemployment claims **COST** you money

Unemployment is a manageable cost

The more claims that pay:

MORE charges into your account

HIGHER your taxes will be



UNEMPLOYMENT CLAIM TIMELINE:

Filed by former employee at a local office

Decision is made to pay or not to pay claim

Decision is mailed to both parties

Appeal can now be filed by either party



Do I have a VALID appeal?

BEFORE hearing ever happens:

Ensure separation was handled properly

Know your liability/exposure costs



When is it appropriate to file an appeal?

- * When you lose a claim where you thought it was misconduct related, but the state did not and said it was really performance.

**Employer MUST know the difference
between MISCONDUCT and
PERFORMANCE to win**



When is it appropriate to file an appeal?

- * You are certain the claimant resigned, but the state ruled that you terminated the employee.**

Employer MUST understand the issues about “initiating the separation”, and the “option to resign”



When is it appropriate to file an appeal?

*** You failed to provide first hand witness statements, but do and will have them for the hearing.**

Hearsay won't help you win!

MUST be first-hand



When is it appropriate to file an appeal?

*** You failed to provide all supporting documentation, but you do and will have them available for the hearing.**

Employer has BURDEN OF PROOF

Policies, warnings, sign off sheets, etc.,



When is it appropriate to file an appeal?

- * When you are certain the Employee quit without good cause**

There are some reasons an employee can quit AND collect unemployment.



Steps for a Successful Hearing

READ NOTICE OF HEARING

Identify important info (in-person or telephone)

What time do you call in or need to appear

DON'T miss the hearing!



Steps for a Successful Hearing

DETERMINE WORK SEPARATION REASON

Resignation or termination?

Gather all documents needed to present at hearing.

Must send (or bring) copies to Hearing Officer and to the employee.



Steps for a Successful Hearing

WHO NEEDS TO PARTICIPATE?

Who has first hand knowledge of separation?

Do you need a Hearing Rep?

Have a coaching session prior to the hearing



Hearing Strategy

Hearing Officer will guide the meeting

**May need to verify dates of employment,
title, rate of pay, supervisor name**

Witnesses under oath

**Moving party should testify first as to
reason for separation**



Hearing Strategy

STAY CALM. Be polite- not defensive

Give only TRUTHFUL facts, but use specifics

Make notes as employee is speaking. You can cross examine, but so can the employee



Hearing Strategy

IF you speak first on the separation issue:

State exact (single) reason for separation

Begin with the FINAL INCIDENT that caused the separation

Explain all warnings given prior to separation



Hearing Strategy

Have your witnesses testify to the final incident

Stay focused. Do not speak about irrelevant issues



Hearing Strategy

Normally, both sides will get a chance to give a final statement.

Make it a recap or short summary of why you feel the claim should not be paid



Phrases to Avoid

He was not able to follow instructions and wasn't capable of doing his job anyway...

He was fired for poor performance reasons... he wasn't meeting our standards

He never did do it right anyway

We needed to make a change



Phrases to Avoid

I gave him about 15 or 20 verbal warnings, he knew what was right and what was wrong...

That's not the REAL reason he was fired...

I fired him after I found someone to replace his position



QUESTIONS & ANSWERS



Corporate Cost Control

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Susan Crosby



Current Issues
and *Scary*
Case
Developments



“Donning and Doffing”

- What is it?
- How does it affect your shop?
- Why should you care?
 - ◆ New “Hot Issue” for the DOL
 - ◆ Overtime liability
 - ◆ Penalties



Bring your Toothbrush!

Who else is after you?

"Businesses who knowingly employ illegal aliens are on notice that they will be criminally prosecuted," says Pete Baird, assistant special agent-in-charge of the ICE Office of Investigations in Kansas City .

"Using ICE's unique immigration and customs law enforcement authorities, we'll also make every effort to seize all assets that may be associated with the illegal activity."



FedEx Manager

“Delivers”

a big check to employees

- Two Lebanese-American Drivers called names by Manager
 - ◆ “Terrorists”
 - ◆ “Camel Jockey”
- Reported to Senior Management and they did . . . *Nothing!*



FedEx Manager

“Delivers”

a big check to employees

- And the Jury Said:
 - ◆ \$61 Million Verdict!!!
 - ◆ \$60 Million against FedEx
 - ◆ \$1 Million against Manager!!



So What's The Big Deal?

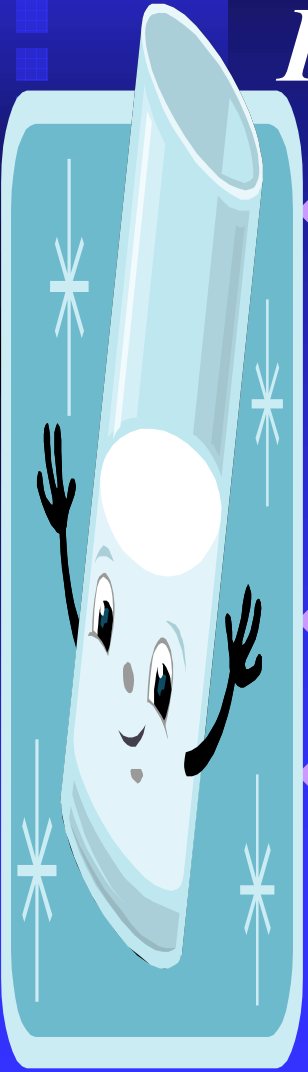
- It is the first major “hit” expanding personal liability beyond “sexual harassment”
- So...it's a *California* case...
 - ◆ Many other states have adopted similar laws regarding personal liability for managers...and the Feds are considering it right now!



Are you going to drink?

HR COMPLIANCE IS CRITICAL

- ◆ Do you have policies and procedures in place to protect you?
- ◆ Have your managers been trained?
- ◆ Are you hoping that if you ignore the issue it will go away?

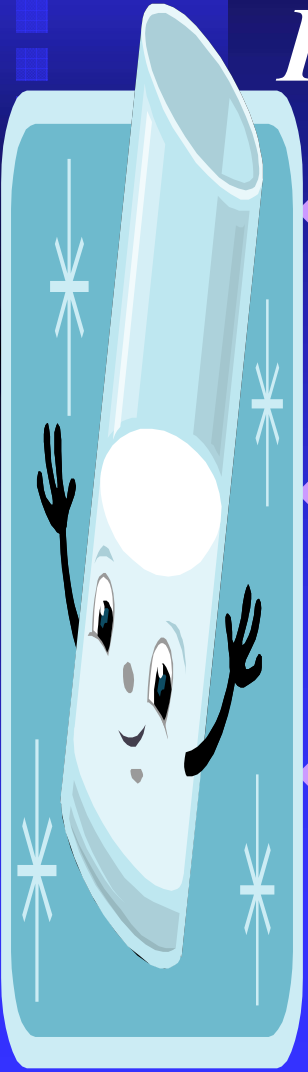




Are you going to drink?

HR COMPLIANCE IS CRITICAL

- ◆ When was your Employee Handbook last updated?
- ◆ When did you last conduct a self-audit of your wage/hour practices?
- ◆ Follow the I-9 procedures to the letter!!!!





The Decision is Yours

The purpose of every other CIC Committee is to help make you and your shop perform better.

The purpose of the Human Resources Committee is to help protect you from yourselves...and your employees.



Thank You!

Human Resources Committee

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QUESTIONS & ANSWERS