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### Headline Summary

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## New I-9 Release Delayed

The U.S. Citizenship and Immigration Services (USCIS) announced a second delay in the release of the revision to Form I-9, *Employment Eligibility Verification*, that new hires must complete to verify their identity and authorization to work in the United States.

Until further notice, employers should continue to use the current version the Form I-9, *Employment Eligibility Verification (Rev. 08/07/09)* even after its Office of Management and Budget (OMB) control number expiration date of August 31, 2012,

The current Form I-9 is available at <http://www.uscis.gov/files/form/i-9.pdf>.

# WatchDog

Guarding the Business of Print

September 2012

## Written Commission Agreement Required

By January 2, 2013, whenever a California employer enters into a contract with an employee where the method of payment involves a commission compensation, the contract must be in writing.

The contract will set forth the methods by which the commission will be computed and paid.

The employer must give a signed copy of the contract to the employee and must receive a signed receipt for the contract from the employee. In the case of where the contract expires and the employee continues to work under the terms of the expired contract, the contract terms are presumed to govern until the contract is superseded or employment is terminated by either party.

Finally, the California Court of Appeals, Second District, in *Keyes Motors, Inc. v. Division of Labor Standards Enforcement (1987)*, clarified that compensation is considered commission if

- the employee is "involved in principally selling a product or service, not making a product or service"; and
- "the amount of their compensation [is] a percent of the price of the product or service."

Employers should review their sales commission agreements to ensure that commissions and payment terms are clear to all parties.

## Special Session on Healthcare

Governor Jerry Brown has announced that he will convene a special session at the beginning of the next legislative year to focus on California's remaining responsibilities related to the implementation of the federal Patient Protection and Affordable Care Act (PPACA).

According to his letter addressed to both Senate pro Tempore Darrell Steinberg (D-Sacramento) and Assembly Speaker John Perez (D-Los Angeles), the special session will provide an opportunity for the Legislature to consider "many important issues and questions [that] cannot be addressed or answered without further guidance from the federal government and additional analysis to understand the interrelationship of the decisions we must make."

California Health and Human Services Secretary Diana Dooley expects that during this special session, the Legislature will work on preparing the state for PPACA implementation in addition to enacting several new state policies including the health benefit exchange system. Dooley, who recommended to the Governor that he call a special session, indicated that it could be called either in December or January and would run concurrently with the regular legislative session.

## Landfill Waste Down

Californians continued reducing waste in 2011, throwing away a record low 4.4 pounds of garbage per day.

This figure, called the per capita disposal rate, is calculated each year by the Department of Resources Recycling and Recovery (CalRecycle). It is the total amount of trash disposed of at home and in workplaces divided by the state population. Residential, commercial, industrial, and construction and demolition waste is included in the figure.

The rate is a slight improvement over 2010 and is the lowest since disposal reporting began in 1989. It is also down 1.9 pounds from the peak of 6.3 pounds per resident per day in 2005. The overall state "diversion rate equivalent" stands at 65 percent, meaning nearly two-thirds of the 86 million tons of waste generated in the state last year was kept out of landfills.

AB 341, signed into law last fall, sets a goal that California source reduce, recycle or compost 75 percent of its waste by the year 2020. CalRecycle has crafted a working document (<http://www.calrecycle.ca.gov/75Percent/Plan.pdf>) to foster discussion on how it might be accomplished.

Overall, the state's 37.4 million residents disposed of 29.9 tons of waste last calendar year. Of that, 99 percent went to California landfills, while the remaining 1 percent was exported out of the state. The employee disposal rate, a calculation used to determine waste disposal rates for businesses, was 11.3 pounds per employee per day with an overall diversion rate equivalent of 64 percent, compared to 63 percent in 2010.

## Texting While Driving

Beachboard reports on the hazards of texting while driving.

Studies indicate that driver reaction time is 35% slower when texting while driving. That's worse than DUI at 21% and marijuana at 12%.

Beachboard recommends that employers:

*(Texting While Driving continued)*

1. Prohibit cell phone usage while in company vehicle, driving on company time, or driving and conducting company business.
2. At a minimum, implement a hands-free policy and provide a hands-free device.

## Is Fulfillment Taxable?

Tax does not apply to charges for services rendered in preparing material for mailing, such as

- addressing, enclosing, sealing, collating, affixing labels, tucking or clasp envelope flaps, metering, stamping, addressing permit indicia, and sorting, tying and sacking in compliance with postal rules and regulations
- charges for the handling or wrapping of material left over after preparation of material for mailing, which is to be returned to the customer

Tax applies to charges for printed matter by a person engaged in providing mailing services to the same extent as to charges for printed matter generally—unless the printed matter qualifies for exemption.

- Charges for printed matter should be separately stated on the invoice to the customer. If not separately stated, the amount subject to tax will be determined by the BOE based on information available to it.

If you have questions on mailing services, or other sales tax subjects, contact Gerry Bonetto at (323) 728-9500, Ext. 248.

## Discrimination Against the Unemployed

AB 1450 (D-Michael Allen) passed the legislature and now awaits Governor Brown's signature. The legislation makes it illegal for employers to publish an advertisement for any job that includes either of the following statements:

- indicating an individual's current employment is a requirement of the job; or
- indicating an employer will not consider an applicant for employment based on that individual's employment status.

The bill subjects the employer to a civil penalty of \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation.

Whatever the Governor's decision, we encourage employers not to include a requirement on employment status in any job advertisement.

## Private Pension Plan Passes

It's now on Governor's Brown's desk, as the legislature approved SB1234 (D-Kevin de Leon) which provides private sector workers an opportunity to enroll in the California Secure Choice Retirement Savings Program, a voluntary retirement plan, to be administered by the California Secure Choice Retirement Savings Investment Board, which would be established by the bill.

Once implemented, the bill would subject employers to significant cost, fiduciary responsibilities and liability with no commensurate benefit to employees by requiring employers without a retirement plan to enroll their workers—unless the employee opts out—in the new the program or pay a penalty of \$250 per employee.

