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### Headline Summary

- Workers' Comp Rates Down
- OSHA Form 300A
- Online Environmental Complaints
- More on Rest Breaks
- Stormwater Inspections
- Non-compete Agreements
- Report Use Tax

### More on Rest Breaks

A California court recently affirmed that rest breaks in general cannot be combined (*Rodriguez v. E.M.E., Inc.*, B264138 (4/22/16)).

Relying on the California Supreme Court's guidance in *Brinker Restaurant Corp. v. Superior Court*, the appellate court held that "rest breaks in an eight hour shift should fall on either side of the meal break, absent factors rendering such scheduling impracticable."

In this case, whether the company can show that unusual circumstances exist to justify its practice of combining rest breaks into a single 20 minute break before the meal period cannot be decided on a motion to eliminate the case before trial (known as a motion for summary judgment).

# WatchDog

Guarding the Business of Print

May 2016

## Workers' Comp Rates Down

With workers' compensation costs soaring in the early 2000s, with peak costs in 2003 at \$6.29, employers and then-Gov. Arnold Schwarzenegger pressed the Legislature for an overhaul to reduce costs in 2004. Nearly a decade later, in 2012, the Legislature acted again.

The good news, for California employers, is that the 2012 overhaul of the state's system of compensating workers for job-related illnesses and injuries appears to be having its stated effect.

By 2015, the Workers' Compensation Insurance Rating Bureau said in a recent report that employers' average insurance premium dropped to \$2.86, down from \$2.97 per \$100 of payroll in 2014.

Rates are still the highest in the nation, according to a biennial survey by the Oregon Department of Consumer and Business Services, which is generally regarded as the most authoritative state-to-state comparison.

## Online Environmental Complaints

On April 21st, the California Environmental Protection Agency (CalEPA) launched an online tool that will make it easier for the public to report environmental problems anywhere in the state from their smartphones, tablets and computers.

The new website (<https://calepacomplaints.secure.force.com/complaints/>) takes the user through the process of reporting an environmental problem, whether it's related to air or water pollution, hazardous or solid waste, or pesticides. The system can identify the user's location using GPS and allows them to upload photos, videos and other documentation of the suspected hazard. The website is available in English and Spanish.

## OSHA Form 300A

May is here and, with it, employers can remove *Form 300A Annual Summary of Work-Related Injuries and Illnesses*, which had to be posted every year from February 1 through April 30.

Although the posting period is over, you are still required to retain your *Form 300A* summaries for five years following the end of the calendar year that these records cover.

The *Form 300A* is a summary form and is separate from the *Form 300* which is a complete log used to record and classify all work-related injuries, illnesses and fatalities and to provide detailed information about those events. Only the *Form 300A* is posted, but recordkeeping rules also apply to the *Form 300*.

## Stormwater Inspections

We recently heard from three members that they have been visited by state Water Resource Board to verify that they were in compliance with the Storm Water Permit requirement. Each was in compliance since they had obtained a No Exposure Certification for the Water Resource Board.

Printers have to file for this permit with the Water Resources Board since they fall in the SIC codes for inclusion in the program—SIC code 27.

While the deadline to file is past, if your company hasn't filed for the permit, you should go ahead and do so because inspectors told these companies that the Water Resource Board is stepping up its inspection activity.

There are two types of permits: Industrial General Permit and No Exposure Certification (NEC).

The easiest way to determine which permit your facility will need is to answer the 11 questions regarding activities that are or will be exposed to precipitation (rain). The checklist can be found on the Graphic Arts Resource Center at <http://bit.ly/Storm-Water>.

You'll first register via the Storm Water Multiple Application and Report Tracking System (SMARTS).

Once you register you'll receive an email with a System Generated Password. At that time, you will apply for the Industrial General Permit or No Exposure Certification—again at SMARTS.

For more information, please contact Gerry Bonetto at (323) 728-9500, Ext 248.

### Non-Compete Agreements

We periodically get a request from a member looking for language for a non-compete agreement for either their employee handbook or an employee who is leaving the company. However, in California it is unenforceable. *(cont.)*

## Non-Compete Agreements (cont.)

California Business and Professions Code Section 16600, moreover, provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Therefore, Section 16600 invalidates provisions in employment contracts or noncompetition agreements that prohibit an employee from working for a competitor after completion of his/her employment or imposing a penalty for doing so.

The California Supreme Court has repeatedly confirmed that non-compete agreements are unenforceable in California. Agreements that restrict an employee's ability to pursue similar employment after leaving a job are prohibited, even if they are narrowly written and leave a substantial portion of the available employment market open to the employee.

There are, however, a few exceptions to the non-compete agreements being unenforceable: the protection of trade secrets; the sale of a business, which can legally restrict the seller's ability to compete in a specific geographic area; or the dissolution of a partnership, which can legally define a geographical area in which one partner cannot conduct similar business.

## Report Use Tax

As reported in the BOE's 2013-14 Annual Report, almost 20 percent of Board-assessed deficiencies (approximately \$95 million) are due to the failure to report use tax on purchases from out-of-state vendors.

Use tax remains the number one area of noncompliance in terms of both revenue and frequency.

Use tax can be incurred in the following ways:

- Purchasing equipment, materials, or supply items from an unregistered out-of-state retailer located in another state or country.
- Withdrawal of items from resale inventory for business or personal use.

To learn more, visit their website at [www.boe.ca.gov/sutax/usetax.htm](http://www.boe.ca.gov/sutax/usetax.htm).

## Minimum Wage Increase

There is much chatter about California's raising the minimum wage to \$15 per hour. It should be noted, however, that that goal will be reached over several years of increases.

The law will increase California's minimum wage to \$10.50 per hour on January 1, 2017 and to \$11.00 on January 1, 2018. Thereafter, the minimum wage would increase \$1.00 per year for four years between 2019 and 2022, reaching \$15.00 per hour. Afterward, the minimum wage would be adjusted annually for inflation.

The proposed law delays the \$15.00 per hour minimum wage until 2023 for small businesses (defined as those with fewer than 25 employees).

California's minimum wage is currently \$10.00 per hour, matched only by Massachusetts (\$10.00 per hour) and the District of Columbia (\$10.50 per hour). A number of California cities and counties have also targeted \$15, including San Francisco, Santa Monica, Los Angeles, and Emeryville.