

# DSI NEWSLETTER

## DEDICATION SERVICE AND INTEGRITY

“OUR BUSINESS IS TO SERVE YOUR BUSINESS”



DANONE SIMPSON  
Insurance Services LLC

CA License 0F30734

### Legal Updates and Industry News

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WINTER 2009

## DANONE SIMPSON INSURANCE SERVICES LLC

Our commitment as your trusted insurance advisor is to assist you with your insurance needs including negotiations, implementation of plan designs, claims and risk management. We have partnered with several Human Resources Consultants, COBRA/Flex Third Party Administrators and other entities to provide personalized programs designed to fit your company's needs. By utilizing our buying power, we have had great success in creating service outsource options at reduced rates that are partially subsidized or cost free.

Our first and foremost goal is to service our clients, making them our priority in our every decision.

#### PRODUCTS AND SERVICES

- Group Medical, Dental, Vision
- Short and Long Term Disability
- Long Term Care
- Employee Assistance Programs
- Voluntary Benefits
- COBRA/Flex
- 401(k) Plans
- Compliance Updates, Executive Seminars
- Workers' Compensation
- Property/Casualty
- Risk Services - Supervisor Training
- Claims Management and Loss Control
- Travel Assistance Programs
- Errors and Omissions (E&O)
- Directors and Officers (D&O)
- Employment Practices Liability (EPL)
- Human Resources Consulting Services

Human Resources Executives-If termed employees or those who have exhausted their COBRA benefits are asking about individual coverage you may refer them to our website [www.dsiemployeebenefits.com](http://www.dsiemployeebenefits.com) to obtain individual quotes.

### President Obama expands State Children's Health Insurance Plan (SCHIP) to cover 4 million more kids, plus pregnant women.

The expansion and reauthorization of the State Children's Health Insurance Program was signed into law by President Obama on Wednesday (February 4). The program, which will cover 11 million children offering very low-cost insurance for children up to 18 whose families earn too much to qualify for Medicaid.

In California, monthly premiums for the state program range from \$4 to about \$17 per month, depending on the child's age, family income and the health plan chosen by the family.

Income minimums for the pro-

grams start at about \$14,000 and the maximum income, at this time is \$50,000, also determined by the family size.

Under the new Federal legislation, pregnant women and children of immigrants can qualify for this coverage if they meet the income criteria. California however, already covers these populations.

To find out if your employee's uninsured children qualify for state coverage, have them call (800) 880-5305. California's program is called Healthy Families. Please note that before an employee removes their children from an Em-

ployer's Group plan they must understand that there is a waiting period of 90 days. The children cannot have been on an Employer Group plan within 90 days before Health Families will accept the application.



Source: Los Angeles Times

## Up Coming Events



### Managing the Alphabet Soup of Employee Leave Laws

This seminar is designed to assist and advise HR Professionals on the best way to navigate through and properly implement confusing California Leave Laws.

- Ensuring that HR Professionals properly follow all steps when an employee requests a leave of absence.
- Helping HR Professionals understand how FMLA, CFRA, PDL, PFL and Workers' Compensation Leaves interact with one another.
- Helping HR Professionals understand if/when COBRA continuation rights should/should not be offered.
- Providing guidance on which forms should be used and at what point the HR Professional should respond to changes.
- Guiding HR Professionals on how to handle employee pay during a leave of absence.

When: Thursday, February 26, 2009  
Where: 22110 Clarendon Street, Suite 201  
Woodland Hills, CA 91367  
Time: 8:00AM - 10:30AM  
Phone: (818) 676-0044

Call to reserve your seat today!

# Safeguarding Your Company Against Employment Lawsuits

**Article by: Danone Simpson**

The importance of Employment Practices Liability Insurance in this economy is becoming even more apparent. These are desperate times for laid off workers and many are expected to look for restitution. EPL Insurance provides coverage for Wrongful Termination, Discrimination, Sexual Harassment claims and some carriers include some Wage and Hour coverage.

As many companies are reducing their workforce, they must ensure they have a plan of action and are prepared for the aftermath of what can be considered wrongful terminations or violations of the WARN Act.

According to Employment / Labor Attorney Henry Josefsberg, Esq., we are seeing a rise in "speculative type claims, e.g. 'mean boss' claims that really go to personalities rather than legal issues. As well as a big increase in age discrimination. Employers appear to be releasing a disproportionate number of older workers. This may revive the popularity of the statistical case... discharged employees are going to be interested in putting together contract-based causes of action... I am amazed by the types of employers...large employers that should know better."

One of the areas of major concern is how an employee is dismissed. According to CFO.com, "Executives who deliver the bad news must tread carefully with their word choices so as not to come across as apologetic or sugar-coat the real reason the employee is being dismissed. Some statements can be used against the company in court. Wrongful Termination and Discrimination claims are expected to be on the rise." Statements such as cutting back the "dead wood" or "dead weight" are far reaching to ears of employees that remain working for the company, making them feel demoralized. People talk and co-workers develop deep friendships bonding them together even pitting them against the company or managers making such comments.

The areas of major concern are in "mass layoffs" pertaining to the WARN Act. When planning to layoff from one department it is important to watch the numbers of persons, as well as the age, race and gender of those being laid off within the department. Make sure your HR professional is well versed on the local and state laws, as some states have stricter requirements. It is important they have the legal resources they need to support the decisions being made by executives and managers. Many EPL carriers offer legal hotlines offering a second opinion to your legal advisor.

While layoffs are seemingly reactive to the economy many executives may use this time as an opportunity to reduce salaries of older workers, so they can bring on younger lesser salaried individuals in the near future. Not only must companies watch their terminations now, they must also be aware of their future hiring practices in replacing previously held positions in order to comply with ADEA. Josefsberg advises using "the same game plan as in the layoffs 15 years ago—construct a Reduction In Force (RIF) plan that requires managers to evaluate ALL employees for layoffs."

FMLA, CFRA, ADEA, Wage and Hour and Workers' Compensation claims are expected to rise. As employees become more stressed they may need more time off work and may even file stress claims against the company. Not only are the employees being terminated an issue, but those who are left behind are equally stressed, concerned for their future workloads and expanded duties.

Many legal advisors are informing their clients to make sure their terminations or layoffs are well documented and that the HR professionals or managers handling these reductions in force (RIF's) are well versed in the company's protocol. While Josefsberg is clear that consistent documentation is the best practice, he cautions that "sudden 'surge' of documentation will be viewed suspiciously."

While not all mishaps are covered by insurance products many of these claims can be avoided by having proper coverage's in place. Along with the legal advice many EPL Insurance plans provide, they can also review your current policies and procedures. Some carriers allow your own legal firms to be reviewed and added into the policy as your legal council.

To ensure you have the proper EPL coverage's and limits in place you need to review your current policies annually with your insurance broker or a competitor who is well versed in these policies. Companies cannot expect that simply because they have polices in place they actually have the broadest of coverage's or proper limits—the rule of not assuming is advisable. Legal defense outside of the policy limits is an important coverage, as well as third party coverage. There are many carriers that write EPL Insurance products and having the cheapest may not be the best; being bare in these coverage's is a plan for disaster.

Research shows:

- Defending an EPL claim can be very expensive—whether you are innocent or guilty, even with a claim that is fraudulent or without merit. The median cost to defend an Employment Practices suit is over \$100,000.
- On average, an EPL policy costs less than 1/150 of the median legal cost plus the median judgment cost of a single case.

EPL Insurance covers defense costs, judgments and settlements (up to policy limits) for the corporate entity, former and current employees, directors and officers.





## President Obama extends the Statute of Limitations for Equal Pay Claims

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009 ("Ledbetter Act"), an anti-discrimination law that does not create a new cause of action for discrimination. Rather, the Ledbetter Act extends the time limit for employees to claim "equal pay" discrimination. Federal law requires employers to pay male and female employees equally when the employees have the same qualifications, same job title, and same duties. If an employee is not paid equally, the employee must bring a charge

of discrimination before the Equal Employment Opportunity Commission no later than 180 days after the discriminatory act. If the employee does not, the employee waives his/her claim.

In light of this new law, we recommend that you review the pay structure for all of your positions to ensure that you are not discriminatorily paying your employees. For example, if the male server position earns more than the female server position, you should remedy the disparity.



Source: SilverFreedman

A Professional Law Corporation

## New legislation closes coverage gaps for dependent college students on medical leave

**New law allows continuation of coverage for college students during medical leave.**

Staying updated on the latest changes to health care law is important for you and your clients. Two new laws regarding coverage for dependent college-age students go into effect in 2009—California Law SB 1168 (effective January 1) and federal law HR 2851 (effective October 9, as contracts renew). Here is what your clients need to know:

- Commercial health plans and insurers are prohibited from terminating coverage for full-time dependent students over 18 during a break in the school calendar or a medically necessary academic leave of absence.
- Coverage continues for up to one year or until coverage is sched-

uled to terminate under the plan's terms and conditions, whichever comes first.

- Documentation of the medical necessity must be submitted to the health plan.

Source: Kaiser 1-23-09 alert

## Allow Ex-Employees Access to Personnel Files, Performance Records

Do the requirements of Labor Code Section 1198.5 apply to former employees?

Yes! This is the case, according to the interpretation of the Labor Commissioner.

Section 1198.5 of the California Labor Code allows an employee to inspect the employer's personnel files for records relating to the employee's performance or grievance at reasonable times. The request shall not apply to records relating to possible criminal violations, letters of reference, records obtained before the employee's employment or any records related to a promotional exam.

### Compliance

The employer must do one of the following in order to comply with the statute:

- Keep a copy of each employee's

personnel records at the place where the employee reports to work;

- Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request; or
- Permit the employee to inspect his or her personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee.

The statute does not apply to records relating to the investigation of a possible criminal offense; letters of reference; or ratings, reports or records that were obtained before the employee's employment, obtained in connection with a promotional examination, or prepared by examination committee

members who can be identified.

### Former Employees

The prior version of the statute used slightly different language, and from that language could be implied the fact that the protection was extended to ex-employees. The current language can no longer be read in that way.

The Division of Labor Standards Enforcement (DLSE), however, has concluded that it was not the intent of the Legislature to limit the protection only to current employees, so the DLSE will enforce the statute in favor of ex-employees.

In light of the DLSE's stance, an employer should not deny an ex-employee access to his/her own personnel file, without consulting with legal counsel.

Source: CA Chamber of Commerce



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# Client Corner



think MinuteClinic  
Quick. Convenient. Health care.

There's really no secret behind MinuteClinic's better approach to diagnosing and treating common illnesses:

- Quick (about 15-minute visits and no appointment needed).
- Affordable (treatments between \$30 and \$110, and reimbursed by most insurance plans).
- Convenient (open 7 days a week, located near pharmacies).

The ability to put together these simple pieces, results in top-quality health care, a history of rapid growth and high customer satisfaction.

### Top Quality Care

Thanks to innovations and safeguards, quick and convenient health care comes with the top-quality care you might expect from your doctor's office, urgent care center or emergency room.

### History

The need for convenient, walk-in health care is something most parents face. When Rick Krieger experienced that need first-hand, it got him thinking about the retail health care center that became MinuteClinic.

### Management Team

A seasoned, creative management team is one of the factors responsible for MinuteClinic's success delivering top-quality care of common illnesses.

## Minute-Clinic is in-network with most major insurers

To learn more about MinuteClinic, treatments and cost, locations, and to see if MinuteClinic is in network with your insurance please log on to [www.minuteclinic.com](http://www.minuteclinic.com).

*Thanks to our client Geoff Nelson, Assistant Vice President/Director of Human Resources, for the International Church of the Foursquare Gospel, for providing us with the information about the MinuteClinic.*

### Give Children separated from all they know...something to hold on to.



Danone Simpson Insurance Services LLC is going to stuff bags to help the My Stuff Bags Foundation bring hope to abused and neglected children entering foster care and crisis centers through its unique program and we are inviting your company to help too.

If your company would like to help, then DSI will provide the bins to collect items for the bags, we will drop them off and pick them up when they are full.

Together we can make a difference in a child's life.



**If you would like to participate, please call Andrea today at (818) 676-0044**

- Stuffed Animals
- Coloring books/crayons
- Small toiletries
- Small photo albums
- School supplies
- Rattles & Pacifiers
- Books
- Hats
- Toys for all ages
- Journal and Diaries
- Hand Held Games
- Children love had crafted items, too



**My Stuff® Bags Foundation**

## Herb Baked Salmon



- 1-1.25 pounds salmon filets
- 1 cup very thinly sliced leeks, white part only
- 2 tablespoons chopped fresh dill
- 1 cup white wine
- 2 tablespoons butter, cut into small cubes

Preheat oven to 425 degrees

In a baking dish, place salmon in a single layer and season with salt and pepper. Sprinkle with leeks and dill. Pour wine over fish and dot fish with butter. Cover with foil and bake for 15 minutes. Uncover and bake for 10 minutes, or until salmon is just cooked through.

Per serving: 236 calories