



■ ■ ■ *By Theodore H. Dokko, Esq.*

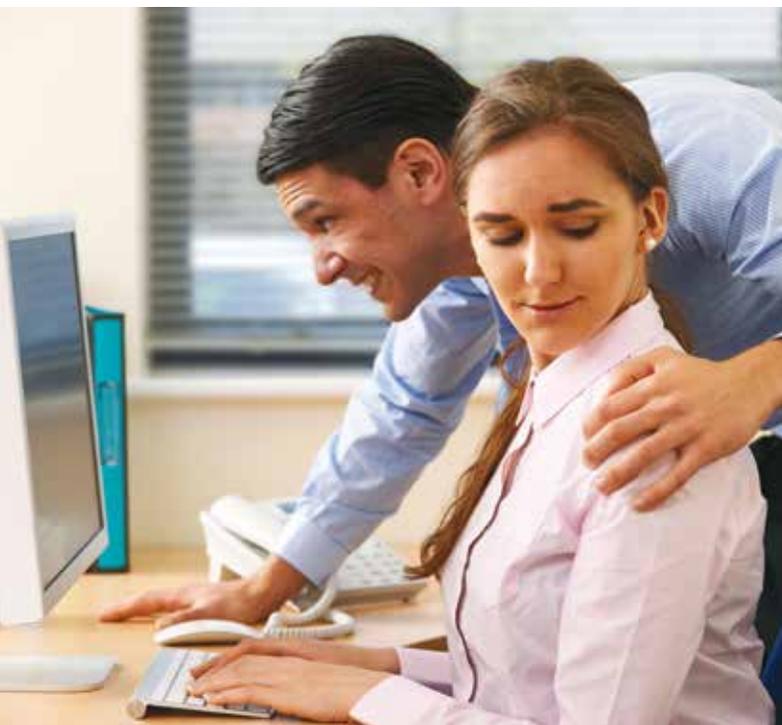
Labor and employment issues continue to be a trap for the unwary, and ignorance of the evolving law and regulations can lead to serious consequences for those who are unaware. As we enter into the New Year, here are the top five issues that employers, especially communities that employ a staff or management companies that staff communities, must be familiar with:

**1. FAIR PAY ACT** ■ In 2016, the Legislature enacted significant changes to the Labor Code to address gender wage inequality. Prior to the amendments, there had to be “equal pay” for “equal jobs” at the “same establishment.” Employers are now burdened with the affirmative duty to reasonably justify any pay differentials between their male and female employees who do “substantially similar work,” when viewed as a composite of skill, effort, and responsibility under similar working conditions. Starting in 2017, employers must also be able to reasonably justify pay differentials of employees who are of different races and ethnicities. An intention to discriminate is not necessary for there to be liability. While a minor difference in pay may be disregarded, job titles, job locations, and salary history, by themselves alone are not sufficient justifications. There must be a “bona fide factor other than” sex or race.

**2. SEXUAL HARASSMENT** ■ Previously, employers had the discretion to determine what reasonable steps they would take to prevent and correct sexual harassment and discrimination. New regulations of the Fair Employment and Housing Act take that discretion away and mandate employers to have written and disseminated anti-discrimination and anti-harassment policies that list all current protected categories and establish a complaint process that ensures an impartial and timely investigation while assuring that no employees will be exposed to retaliation. If the workforce includes more than 10% non-native English speaking employees, the policies must be distributed in that language as well. All employers must not only have such procedures in place but must ensure that supervisors are properly trained to address potential complaints related to these policies and procedures. A failure to comply with these new regulations can lead to a claim that the employer has failed in its affirmative duty to prevent harassment and discrimination.

**3. MANDATORY PAID SICK LEAVE** ■ All California employers are required to grant their employees paid sick leave. Full-time employees are to minimally receive three paid days per year. Consistent with required usage and accrual methods, employers can either allow their employees to accrue one hour of sick leave for every 30 hours worked or can grant the annual sick leave in one lump sum. Employers using the accrual method may place a cap on the accrual of such sick leave to six days per year and may similarly cap usage of sick

# 2017 Top Five Employment Issues



leave to three days per year. Despite offering paid sick leave prior to the law's enactment, many employer's current sick leave policies do not comply with the Labor Code.

**4. DISABILITY ACCOMMODATION** ■ Once an employee's disability becomes known to the employer, the employer is obligated to determine whether a reasonable accommodation that will allow for the employee to maintain employment can be made by engaging in a good-faith interactive process with the employee. Failure to do so can bring additional liability to the employer as a separate violation of the Fair Employment and Housing Act. Often times, an employee will complain about stress from the job. Disability is broadly construed, and complaints of stress must be considered to be a disability that requires the employer conduct an interactive process. A Court of Appeals recently expanded an employer's accommodation requirements when it found that an employer had to accommodate an employee when a member of his immediate family had a disability that affected that employee's schedule.

**5. WAGE/HOUR AND OVERTIME** ■ The minimum wage increased in 2016 and will increase again in 2017. Beginning January 1, 2017, employers with 26 or more employees must pay a their employees as minimum wage of \$10.50 per hour while employers with 25 employees or less must pay their employees at least \$10.00 per hour. These increases practically impact which employees can be classified as exempt from



overtime. Any employee who earned less \$41,600 in 2016 must be classified as non-exempt. In 2017, the figure will rise to \$43,680.



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