

Small Business Guide to Human Resources: A California Perspective

by

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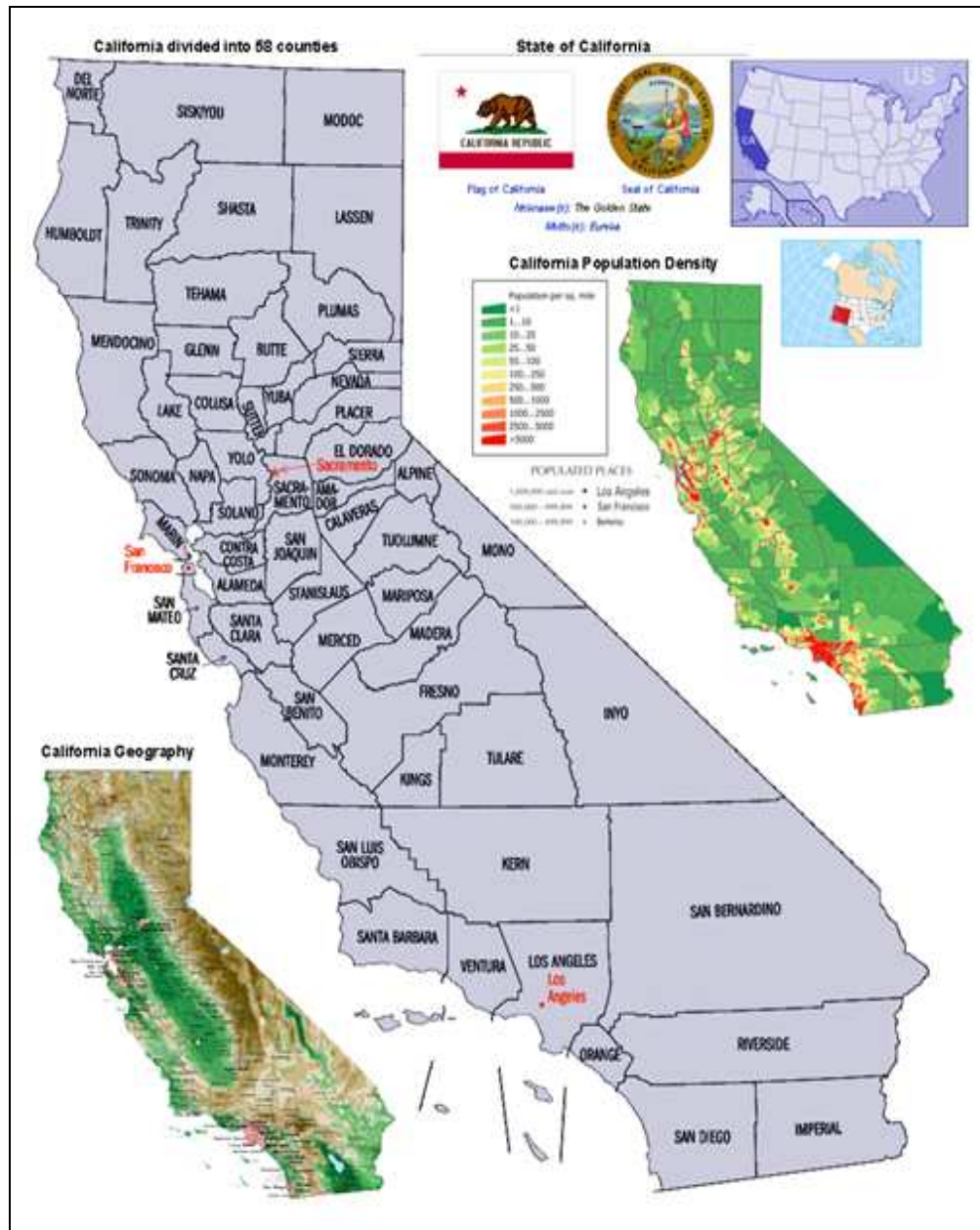


Figure 01: California Image. Source: California Image (2010)

Small Business Guide to Human Resources

Introduction

Small businesses in the United States are the backbone of the US economy. Based on data from the SBA (2010, p. 1), “52 percent of all US workers are employed by small businesses. Of those, over 19 million US employees work for companies employing fewer than 20 workers.” Many small businesses operate without employing a human resource professional to help them understand the myriad of employment laws with which they must comply. This paper is intended to provide small business owners with a basic overview of the types of federal and state employment laws that apply and the resources to obtain more detailed information. This paper is not intended as legal advice and the authors recommend that business owners seek appropriate legal counsel to review their employment policies and practices.

Definition of a Small Business Owner

Under the Occupational Safety and Health Administration (OSHA) and North American Industry Classification System (NAICS) codes, a small business owner:

- Is organized to make a profit.
- Has a place of business in the U.S.
- Primarily operates in the U.S. or contributes significantly to the economy when it pays taxes or uses American products, materials, or labor.
- Is independently owned and operated.
- Is not dominant in its field on a national basis.
- May be a sole proprietorship, partnership, limited-liability company, corporation, joint venture, association, trust or cooperative, or any other legal form.

From a legal standpoint, the way a small business is defined will vary depending on the industry the business operates in. On July 30, 1953, Congress enacted the Small Business Act. This Act created the Small Business Administration (SBA) and its purpose was to “aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns” (SBA, 2010, p. 1). Thus, the SBA determines the legal definition of a small business and has established size standards or numerical definitions of what constitutes a small business. A business concern will be classified as small if it is at or below the size standard.

Each private sector industry in the U.S., identified by the North American Industry Classification System (NAICS), will have a unique size standard. The majority of size standards are based on the average number of employees in the past 12 months or average annual revenue from the past three years. They can range anywhere from \$0.75 million to \$35.5 million for size standards based on average annual revenues and from 50 to 1,500 employees for size standards based on number of employees (NAICS, 2010). It is important to know the SBA’s size standards to determine if ones business is eligible for its programs.

According to the Office of Advocacy of the SBA (SBA, 2010), a small business has fewer than 500 employees. Most American’s are startled by the high number of employees defined by SBA. Citizens questioned during the course of writing this paper frequently said 50 employees or less is more accurate. While the U.S. Census Bureau does not give a specific definition for what constitutes a small business, it does provide statistics of U.S. Businesses based on the number of employees. For instance, California has 645,268 businesses with less than 20 employees, 79,709 with 20 to 499 employees, and just 5,811 businesses with 500 or more employees (U.S. Census Bureau, 2007). It is evident that there are a larger proportion of businesses with 20 or less employees. However, both of these numbers exclude over 2.7 million

non-employers in California (SBA, 2010). Non-employer businesses, those with no paid employees and annual business receipts of \$1,000 or more, account for the majority of all business establishments (U.S. Census Bureau, 2010). Thus, it is appropriate to define a small business owner as one with zero to 50 employees.

Forbes Comparison of Best States for Business

Forbes Magazine publishes an annual report on *The Best States for Business and Careers*. Ranking criteria includes six categories and ten different data sources. The six “vital categories” examined are: (1) business costs (2) labor supply (3) the current economic climate (4) growth prospects (5) quality of life, and (6) the regulatory environment in the state (Badenhausen, 2010). The lower the number, the better the state scored on this list. In 2010, Utah (#1) ranked as the best state for business and careers while California ranked number 39 of the 50 states. California dropped one spot lower in the ranking in 2010 than their previous ranking (#38) in 2009.

The regulatory environment in California was identified as restrictive for business and Forbes Magazine ranked the state number 43 out of 50. The cost of starting and owning a business in California was expensive (#44) and only six states were more expensive (Badenhausen, 2010). Regulation and the overall cost of business are key factors in deciding where to start a business. The quality of life in California had a favorable ranking (#22), labor supply (#25), and growth prospect (#11). These rankings are useful to SBO’s hoping to thrive in California because these benchmarks provide insight into the business climate. While California may be harsh regarding regulatory environment and business costs, the sunny climate and growth prospects provide incentives to own a business here.

Federal Laws Affecting SBO

This paper specifically focused on California and factors that affect HR practices in the state. However, included below are several links and resources to Federal regulations affecting small business organizations. This is a sample listing and employers should seek legal advice.

- U. S. Division of Labor (E-Laws) - <http://www.dol.gov/elaws/elg/>
- Fed OSHA - <http://www.osha.gov/index.html>
- Government Departments - http://www.usa.gov/Agencies/Federal/All_Agencies/index.shtml
- U.S. Citizenship & Immigration - <https://egov.uscis.gov/cris/Dashboard.do>
- U.S. EEOC - <http://www.eeoc.gov/>
- Small Business Administration - <http://www.sba.gov/>
- Internal Revenue Service (IRS) - <http://www.irs.gov/>
- U.S. Department of Justice - <http://www.justice.gov/>
- U.S. Department of Health and Human Services - <http://www.hhs.gov/>

California Laws Affecting SBO

Compensation and Benefits

Full-time v. Part-time Employees

Full-Time Employee: An SBO has discretion in determining what classifies a full-time employee in their organization. Traditionally, full time employees have been classified as those who work 40 hours per week; however, some companies allow those who work 24-32 hours per week to be considered full-time employees (CalBiz, 2010). A Part-Time Employee is an employee who works less than the number of hours determined as full-time by an organization.

Exempt v. Nonexempt Employees

Classifying employees correctly as exempt or nonexempt is crucial to following employment law. Classifying an employee as exempt when they are not could result in a wage claim amounting to a great deal of back pay due to an employee, which could devastate a SBO. Nonexempt Employee: An employee who is subject to all provisions regarding wage order and wage laws (CalBiz, 2010). An Exempt Employee is an employee who is not subject to all wage and hour provisions regarding overtime, meal periods, and rest periods.

Minimum Wage

All employers in California must follow the state minimum wage standard. Currently, the minimum wage in California is \$8.00 per hour (California DIR, 2010). However, in certain cities within California the minimum wage is raised higher due to the area's cost-of-living. For example, in San Francisco the current minimum wage is \$9.79 per hour, and will go up to \$9.92 per hour as of January 1, 2011 (City & County of San Francisco, 2010). SBO's should research the city they will be conducting business in to ensure they are meeting the proper minimum wage standards. Failure to pay workers the proper minimum wage can result in a wage claim being filed against the employer. There are some exceptions to the minimum wage law (e.g. employees who are the parent, spouse, or child of the employer are exempt from the minimum wage standard and may be paid less than the set minimum wage (California DIR, 2010), however, SBO's should seek legal advice.

Industrial Wage Orders

Industrial Wage Orders (IWO) specifies requirements related to wages, work hours, and other employment guidelines pertaining to a specific industry (CalBiz, 2010). California has a total of 17 Industrial Wage Orders. Samples of the various types of wage orders include

Manufacturing Industry (IWO #1), Professional, Technical, Clerical, Mechanical and Similar Occupations (IWO #4), and Agricultural Occupations (IWO #14). Employers, including SBO, are required to post all applicable Industrial Wage Orders for their business. For example, a Mercantile business might post IWO #7 (Mercantile Industry), IWO #4 (Professional, Technical, Clerical, Mechanical and Similar Occupations), and other applicable Industrial Wage Orders. See Appendix B for more information on posting requirements. Determining which wage order(s) must be posted at a specific SBO may be a little tricky. To simplify this, the California Department of Industrial Relations (DIR) has issued a great resource for SBO's. The handbook is titled *Which IWC Order? Classifications* and is available to help employers correctly determine which wage orders apply to specific business types and job positions. The handbook can be found online at: <http://www.dir.ca.gov/dlseWhichIWCOrderClassifications.PDF>.

Rest Periods

Employees are entitled to one rest period for every four hours worked, "or major fraction thereof" (California DIR, 2010, p. 1). For the purposes of defining a major fraction, the Division of Labor Standards Enforcement (DLSE) has determined any hours worked beyond two to be a major fraction. An employer is not required to give an employee a rest period if the total hours worked for the shift will be three and one-half hours or less. A rest period is counted as time worked and must be paid by the employer. Because the rest period is paid time, an SBO may require that the employee stay on the work premises during the rest period. Rest periods should be given as close to the middle of the four-hour work period as possible. If an employer cannot provide the rest period at the middle point of the four hours, the employee is still entitled to the rest period at another point during the four hours (California DIR, 2010).

A rest period must be net ten minutes. Net ten minutes, as interpreted by the DLSE, means that the employee is entitled to a ten-minute rest period in a rest area (CalBiz, 2010). The time it takes for the employee to reach the rest area is not included in the total ten minutes, and therefore, the total rest period may be more than ten minutes in these cases.

While an employee may choose to waive their rest period, it is not advised that rest periods be waived, even in cases when the employee requests to work through the period (CalBiz, 2010). Failure to provide a rest period to an employee could result in the employee filing a wage claim. If an employee does not receive a rest period that they were entitled to take, the employer must pay that employee for one hour of time worked at their regular rate of pay each workday that a rest period is not given (California DIR, 2010).

Combining rest periods, adding rest periods onto lunch breaks, arriving late to work, or leaving early from work in lieu of taking a rest period are all not allowed under the California rest period employment law. Employees who smoke are not entitled to any extra rest periods. Special accommodations and additional rest periods may be granted for lactation purposes (California DIR, 2010). If an employee is requesting additional rest periods or special accommodations due to lactation purposes, an SBO should investigate the law more in-depth to determine exactly what they are required to do for that employee, as the additional time may qualify as unpaid (CalBiz, 2010).

Meal Periods

Meal periods must be given to employees after five hours of work. A meal period, however, may be waived if both the employer and employee mutually agree that no meal period is necessary and the total hours worked for the day will not exceed six hours. The meal period

must be at least thirty minutes. Employees are not allowed to skip their meal period in order to arrive to work late or leave work early (California DIR, 2010).

During a meal period, employees must be relieved of all duties. If an employee is not relieved of all duties, the meal period is considered an “on duty” meal period and the employer must pay that employee for their meal period at the employee’s regular rate of pay (California DIR, 2010). On duty meal periods are only allowed when the type of work being done prevents the employee from being free of all duties. Both the employer and employee must sign a document agreeing to the on duty meal period. The document must include a statement that the employee may cancel the agreement at any time. Additionally, the employee must be free to leave the work premises during the meal period. If an employee is not free to leave the work premises during their meal period, the employer is deemed still in control, and thus must pay the employee for the meal period at the employee’s regular rate of pay (California DIR, 2010).

A second meal period is necessary if an employee works more than ten hours per day. The specific hours may vary according to the specific Industrial Wage Order(s) that the business operates within. This second meal period must be offered by the employer and employee can waive the meal period if certain requirements are satisfied (CalBiz, 2010). An employee can waive a second meal period only if all of the following requirements are met: (1) the total hours worked for the day will be no more than 12 hours, (2) both the employer and employee agree to the waiver and (3) the first meal period of the shift was taken.

If an employer fails to provide a meal period in accordance with the California Meal Period law it could result in a wage claim being filed against the business by the employee (California DIR, 2010). If an employer does not provide a meal period, the employee is due one hour of additional pay at the employee’s regular rate of pay. A violation of the law would include

providing an employee a meal period after five and one-half hours of work during an eight-hour shift. Here, the employee is still due an additional hour of pay because the meal period was provided after more than five hours of work (CalBiz, 2010).

Overtime

If an employer has nonexempt employees the employer must pay the employees according to the California Overtime laws (California DIR, 2010). Below are the major provisions of the overtime law:

Employees will earn one and one half times their regular rate of pay for any time worked in excess of eight hours and up to 12 hours in a workday. If an employee works more than 12 hours in one workday, they will earn two times their regular rate of pay for the hours worked in excess of 12. If an employee has worked 40 hours in a workweek, the employee will earn one and one half times their regular rate of pay for all hours worked in excess of 40 hours (California DIR, 2010).

Employees who work for seven consecutive days in one workweek (regardless of the number of hours) are eligible for overtime at the rate of one and one half times their regular rate of pay for the first eight hours of their shift, and two times their regular rate of pay for any hours worked in excess of eight hours on their shift on that seventh consecutive workday (California DIR, 2010).

Holidays

Employers are not required by law to provide any time-off (paid or unpaid) to their employees for any holidays. Employers are also not required to pay employees any special pay rate if they work on a holiday, unless they qualify for additional compensation under a separate employment law (overtime, for example). If an employer does pay a special rate to employees

who work holidays, or provide time off (paid or unpaid), it is the employer's absolute right and at the employer's discretion to do so but the decision is not regulated by law (California DIR, 2010).

Cal-COBRA

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA) to provide continuation of group health coverage that otherwise might be terminated (U.S. Department of Labor, 2010). COBRA provides temporary health coverage at group rates. Only certain former employees, retirees, spouses, former spouses, and dependent children are covered when coverage is lost due to certain specific events. Federal COBRA applies to employers and group health plans that cover 20 or more employees. It allows those whose job has ended or whose hours are cut to keep the group health insurance for at least 18 months (California Department of Managed et al., 2010).

In 1997, California passed the California Continuation Benefits Replacement Act (Cal-COBRA). This is an expansion of the federal COBRA coverage and applies to smaller organizations with two to 19 employees that provide health insurance. If health insurance is lost due to a qualifying event, one is eligible to get Cal-COBRA for up to 36 months. Qualifying events include the employee's job ends, the employee's hours are cut, one divorces or legally separates from the employee, one is no longer a dependent of the employee, the employee enrolls in Medicare, or the employee dies. Those who are fired for gross misconduct are not eligible for Federal COBRA or Cal-COBRA.

Insurance carriers and Health Maintenance Organizations (HMOs) are required to provide COBRA-like coverage since such smaller organizations are not subject to federal

COBRA provisions (California Department of Managed et al., 2010). Cal-COBRA is also available for people who have used up their Federal COBRA (HMOhelp, 2010, p. 1).

Small Employer (2 to 19 employees)

Cal-COBRA — up to 36 months

Large Employer (20 or more employees)

Federal COBRA — 18 or 36 months

(depends on the qualifying event)

Cal-COBRA — If Federal COBRA was 18 months, 18 more months of Cal-COBRA is available

Employers are required to provide certain notices to employees and insurance carriers. If an employee has a Cal-COBRA qualifying event, the employer must notify the plan administrator in writing within 30 days of the qualifying event (CalBiz, 2010).

Employers must give notice to employees when those qualified beneficiaries current continuation coverage will end before the end of the continuation coverage period. Beneficiaries should be notified of their ability to continue coverage under a new group benefit plan for the remainder of that period. Notice should be provided 30 days before terminating the current plan or when all enrolled employees are given notice. SBO's should request information in writing from the plan administrator, who will provide information to assist in giving proper notice (CalBiz, 2010).

Leaves of Absence

Vacation

While there is no legal requirement that employers provide employees with vacation (paid or unpaid), there are certain guidelines an SBO should be aware of if they decide to offer

vacation to employees (California DIR, 2010). Vacation is earned based on the amount of time worked and therefore is a form of wages. Because vacation is a form of wages the vacation policy an employer adopts is considered a contract between the employer and employee (CalBiz, 2010).

Vacation time is earned as work is completed. For example, if an employee earns ten days of vacation per year, after six months in a year they have earned five days and the employee has a right to take vacation for that amount of time (California DIR, 2010). Employers are allowed to put a reasonable cap on the amount of vacation that can be accumulated (for example, 80 hours), but they cannot simply take it away without payment if it is not used (CalBiz, 2010).

Employers have the right to decide which classes of employees earn vacation time; for example, part-time employees of a SBO could be excluded from earning vacation, or temporary employees. If an employee is separated from the company (voluntarily or involuntarily) they are entitled to all earned vacation and must be paid out the amount at their final regular rate of pay (California DIR, 2010).

If an employer fails to pay a separated employee their remaining vacation time at the time the employee leaves, the employee has a right to file a wage claim against the employer. Additionally, if an employer takes away any vacation time earned without paying the employee, the employee could file a wage claim against the employer (California DIR, 2010).

Sick Leave

Sick leave (paid or unpaid) is not legally required to be provided by to employees by an employer (there is one exception to this, though, see below) (CalBiz, 2010). However, if an employer decides to offer sick leave of any kind to employees SBO's should be aware of some guidelines.

Sick leave is not considered a form of wages; therefore, sick leave can be taken away after a certain period from an employee without payment. Additionally, when an employee is separated, an employer is not required to pay out the employee's remaining sick leave. An employer who offers sick leave has a right to ask an employee for verification of their illness when they are requesting to use sick leave. Many employers who offer a sick leave benefit to employees allow the leave to be used when an immediate family member is sick as well to allow the employee to care for the family member (CalBiz, 2010).

One important note regarding sick leave is that it is actually a legal requirement in the county of San Francisco. In 2007, the law took effect and all current employees were immediately eligible for the benefit. Employees hired after the date the law took effect are eligible for the benefit after 90 days of service in the company. The law requires that employees earn an hour of paid sick leave for every 30 hours worked. The cap on the amount of sick leave that an employee can accrue is 72 hours for employers with ten or more employees and 40 hours for employers with less than ten employees. Businesses in San Francisco County are required to post information regarding this law (City & County of San Francisco, 2010).

State Disability Insurance

State Disability Insurance (SDI) is mandatory for almost all businesses and is administered through the Employment Development Department (EDD). Self-employed persons are not required to take part in any of the SDI requirements. Employees should notify their employer when they are injured and must file a claim with the EDD to receive SDI. SDI is paid for by employees through a deduction from their paycheck and is not funded by employers (CalBiz, 2010). Employees are eligible for SDI when they suffer a non-work-related injury or are

disabled due to a pregnancy or childbirth, which prevents them from returning to work. SDI is a form of a partial wage-replacement plan and should not be considered a type of paid leave.

An employer is not required to hold an employee's position in a company if they are on SDI; however if an employee also qualifies for another type of leave (for example, family leave, Pregnancy Disability Leave) the employer may be required to hold the position as a requirement of that leave and caution should be taken to ensure the employee is only taking part in SDI before separation of the employee occurs (CalBiz, 2010).

Retirement Benefits

Retirement benefits are optional for employers to offer to their employees. If an employer does decide to offer retirement benefits to employees there are certain laws related to the administration of the benefit outlined in the federal regulation titled Employment Retirement Income Security Act (ERISA) (CalBiz, 2010). SBO who offer this benefit should investigate ERISA in order to ensure they are not in violation of the Act. Described below are the two general categories of retirement plans:

Defined Benefit Plans: A type of retirement plan in which a pre-determined formula is used to calculate what benefits a retiree receives. Length of service and the employee's salary are typical variables included in the formula. Under this type of retirement plan, the employer is responsible for funding and taking on the investment risks and returns associated with the plan (CalBiz, 2010).

Defined Contribution Plans: A type of retirement plan in which a certain amount of money is deposited into an employee's account over time. The funds are invested and the gains and losses of the investment determine how much will be received at retirement. Under this type

of plan, the employer is responsible for providing desirable investment options to the employee, but the employer does not assume the risk associated with the investment (CalBiz, 2010).

Family Leave: FMLA and CFRA

The federal Family and Medical Leave Act (FMLA) and the California Family Right's Act (CFRA) leaves must be offered if an employer has 50 or more employees (Fair Employment and Housing Commission, 2010). Family leave laws are complex and intricate in nature; however, if an SBO meets the employee number threshold and must offer family leave to their employees, it is vital that they are understood. Below are the basics about whom and what family leaves cover and the major differences between the federal FMLA and California's CFRA.

Employee Eligibility:

Employees qualify for family leave if they meet all of the following conditions:

The employee works for a company with 50 or more employees. The employee has worked for the company for at least 12 months. Note that the 12 months do not need to be consecutive (CalBiz, 2010).

For FMLA: The 12 months of employment must be completed with no gap in between employment greater than seven years (CalBiz, 2010). For example, if an employee works for a company for three years, separates from the company for seven years and then is re-hired and has worked for nine months, the employee is not eligible for FMLA.

For CFRA: The 12 months of employment may be completed within any amount of time and there is no cap between breaks in employment. The employee must have worked for the company at least 1,250 hours within the 12-month period (CalBiz, 2010).

The employee must work at a worksite where the company employs 50 or more employees or be within 75 miles of a worksite where there are 50 or more employees employed by the company (CalBiz, 2010).

1. An employee does not need to re-qualify for family leave if they are requesting additional leave for the same reason as their original use for the leave. However, if additional leave is requested for a different reason, the employee must re-qualify for the leave.
2. Leave Coverage:
3. Both of the leave laws allow employees to take time off due to their own illness, a family member's illness, or a birth or adoption of a child. Both FMLA and CFRA provide the employee the right to take up to 12 weeks per year off per year. Employees are not required to take all 12 weeks at once and are permitted to take short amounts of time off amounting to 12 weeks or less in one year. Employees may also use the 12 weeks to create a reduced work period. The employee would work less hours per week and the time off would count towards the 12 weeks the employee is entitled to take.
4. Below are the three major coverage differences between FMLA and CFRA:
5. FMLA covers disabilities related to pregnancy; CFRA does not. Instead, California offers a Pregnancy Disability Leave, which is completely separate from CFRA (see subsequent section on Pregnancy Disability Leave for details).
6. CFRA allows leave for employees to care for their registered domestic partner; FMLA does not.

7. FMLA permits employees to take a leave related to a family member's military service or injury; CFRA does not. Under FMLA, employees may take a leave due to a qualifying exigency related to a spouse, child or parent in the military or if a spouse, child or parent was injured while on active duty and needs to be cared for. If the leave is to care for an injury, the employee is allowed to take off 26 workweeks in a year, not the traditional 12 weeks.
8. Employers may require medical certification related to the leave an employee is requesting. The employer has a right to terminate the employee if they have been requested to provide medical certification and refuse to do so. As stated above, the family leave laws are quite complex, and if an SBO is required to offer FMLA and CFRA they should investigate the laws to ensure all requirements are being met.
9. A Note on Medical Record Confidentiality:
10. SBO's should keep in mind that all employee medical information must be kept confidential. In California, there is a law that states that appropriate procedures must be followed to keep employee medical information private and limited to only authorized persons. An employee's medical file must be kept separate from their regular personnel file (CalBiz, 2010).

Pregnancy Disability Leave

Pregnancy Disability Leave (PDL) must be offered when an employer has five or more employees (Fair Employment and Housing Commission, 2010). The basics of Pregnancy Disability Leave: (1) Only females are eligible for the type of leave because those who qualify have to be disabled due to a pregnancy related reason. (2) Women do not have to work a

minimum number of hours to receive this benefit; they qualify on their first day of work. (3) The leave allows employees to take up to four months off, but the time does not have to be taken all at once and can be broken up into short amounts of time. (4) Employers are not required to pay employees while on leave, but benefits and seniority accrual must continue during the leave. (5) The employee, upon completion of her leave, must be reinstated to her position or a comparable position (unless a rare circumstance applies) (CalBiz, 2010).

An employer can require that an employee use her accrued sick leave while on PDL, but may not require an employee to use her vacation balance while on the leave. If an employer does not have a policy regarding PDL and sick time, the employee may or may not use the sick time—it is her choice. An employer may not prohibit the use of sick time while an employee is on PDL. PDL may run concurrently with FMLA, but does not qualify under CFRA (CalBiz, 2010). It is advised that an SBO research the PDL and other leave requirements if an employee is requesting PDL to ensure they do not violate any part of the leave requirements.

Workers Compensation Insurance

Every employer in California who uses employee labor is required to carry Workers' Compensation Insurance in case an employee is injured on-the-job. If an employer fails to provide Workers' Compensation Insurance, they are subject to very large consequences including monetary fines and stop orders (which cease business operations until the employer obtains Workers' Compensation Insurance). SBO who hire family members to perform labor are not exempt from this requirement and must carry the insurance. The only exception for employers regarding Workers' Compensation Insurance is for partnerships and corporations. For partnerships, if the only employees performing labor are the partners, the insurance is not required. For corporations, if the corporate officers are the sole shareholders then Workers'

Compensation Insurance for the corporation, officers and directors is not required (California DIR, 2010).

Health Benefits

Health care coverage, while expensive, is one of the biggest incentives an employer is able to offer their employees. Many employers have seen a significant increase in recruitment and retention by offering health benefits and the cost can be offset by the tax deduction that employers can use if they have the benefit, making health care coverage very appealing to SBO's. To help SBO offer health benefits to their employees, California passed the small business health insurance law (IC 10700). IC 10700 helps control the cost of insurance for small businesses and removes the emphasis on pre-existing conditions when an employer is seeking coverage. If an SBO wants to offer health benefits to its employees, the SBO should become well educated in the area in order to negotiate a fair price for the coverage (CalBiz, 2010).

Unemployment Insurance

Unemployment insurance (UI) is a benefit offered to employees to receive compensation when they lost their job through no fault of their own. UI is fully paid for by employers through a tax they pay based on wages paid to employees (EDD, 2010). Employers pay UI on a quarterly basis using a tax rate calculated by the Employment Development Department (EDD), which takes into account the cost of claims submitted under your company (CalBiz, 2010).

When an employee files a UI claim, the EDD contacts the former employer to collect relevant information regarding the employee to determine if the employee is eligible for UI. The employer must respond to the EDD inquiries in a timely manner (usually within 10 days), so it is important to track all correspondence from the EDD (CalBiz, 2010).

Labor Relations

California Fair Employment and Housing Act (FEHA)

SBO's in California should become familiar with the California Fair Employment and Housing Act or FEHA. This law applies to all businesses that employ, or have employed, five or more employees in California during 20 or more calendar weeks within the calendar year (CalBiz, 2010). In harassment cases, only one employee is required to be regularly employed. The Department of Fair Employment and Housing (DFEH) oversees FEHA. It enforces California civil rights laws and seeks to protect Californians from employment, housing and public accommodation discrimination, and hate violence (FEHC, 2007).

The California Fair Employment and Housing Act Government Code Section 12940 states:

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California: (a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment. (State of California, 2010)

FEHA is similar to Title VII of the Civil Rights Act (CRA). However, the FEHA covers more protected categories than the CRA. This law also provides more protection than the Americans with Disabilities Act (CalBiz, 2010). Under the FEHA, it is unlawful to base employment actions on twelve protected classes. Those protected classes are race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

When employment actions are taken, it is important to refrain from basing those actions on any of the characteristics covered under FEHA. Such employment actions include recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, and terms, conditions, or privileges of employment. Additionally, it is unlawful to engage, or permit employees to engage, in harassment of any protected class. California employers are required to take reasonable steps to prevent harassment in the workplace. While harassment can occur because of race, religion, age, ethnicity, and other protected classes, the most common type of harassment is sexual harassment (CalBiz, 2010).

Sexual Harassment

There are two types of sexual harassment: quid pro quo and hostile work environment (CalBiz, 2010). If an employer is aware of harassment, it is important to fix the situation to avoid being held liable. Furthermore, employers with 50 or more employees are required to provide at least two hours of “classroom or other effective interactive training” to all supervisory employees on the prevention and correction of sexual harassment every two years (State of California, 2010). This training is mandatory for supervisors, although other employees may also be trained without creating an assumption that those employees are also supervisors. Employers may also include other types of harassment training in the two hours of mandatory training (FEHC, 2010).

Employers may not retaliate against an employee, applicant, or independent contractor, for opposing sexual harassment or other unlawful discrimination, or for filing a complaint, testifying, assisting, or participating in an investigation, proceeding, or hearing under FEHA. Even though California is an employment at will state, FEHA provides protections for employees in protected classes, which serves as an exception to employment at will. Thus, when

terminating an employee in a protected class, employers should make sure that the proper documentation is available to show that the termination was for a legitimate, non-discriminatory reason (CalBiz, 2010).

Employees have one year to file a discrimination or harassment claim with the DFEH. However, if the employee uses an employer internal remedy process and a year passes, the employee will still have the opportunity to sue the employer. SBO's want to avoid discrimination and harassment claims by learning what behavior is considered discrimination and harassment, take steps to prevent it, and immediately stop the activity and remedy the situation if it occurs (CalBiz, 2010).

At-Will Employment

California is an at-will employment state. This means that the employer or employee may end the employment relationship at any time with or without advance notice or cause. Employment contracts can be written, oral, or implied. Such contracts may override the presumption that the employment relationship is at-will (CalBiz, 2010).

SBO's should include an at-will statement on employment applications. Including such a clause will help maintain the presumption that employment is at-will. The at-will statement should provide a clear and complete description of the at-will status. It should also state that any contrary representation to employment at-will must be in a signed agreement in order to become binding (CalBiz, 2010). Additionally, the introductory period for new employees should never be considered or referred to as a "probationary period." By saying this and upon the employee's completion of this period, this would imply some special employment status or rights that conflict with at-will employment (CalBiz, 2010).

Hiring Youth

It is important for SBO to know who is considered a minor under law. According to the California Labor Code, a minor is defined as any person under the age of 18 years who is required to attend school under the provisions of the Education Code. Minors also include those under age six. If a person under the age of 18 years graduates from high school, the California Labor Code entirely excludes them from compulsory education laws, permit requirements, work hour restrictions, and all occupational prohibitions. However, “dropouts” and emancipated minors are still subject to all California’s child labor laws.

The exceptions for parents/guardians under California child labor laws involve those that employ minor children in agriculture, horticulture, viticulture, or domestic labor on premises that the parent/guardian owns, operates or controls. California Law does not permit parent/guardians to employ their underage children in prohibited occupations. However, parent/guardians are exempt from state and federal minimum wage and overtime pay requirements (CalBiz, 2010).

Prior to hiring, all minors must have a valid work permit, issued by the superintendent of the school district in which the minor attends school. The employer or the minor must obtain the necessary forms before employment can begin. The forms required are the Statement of Intent to Employ Minor and Request for Work Permit and the Permit to Employ and Work. The forms should be completed by the minor and signed by the employer and the parent/guardian of the minor. Once the form is filed with the school district, the district may issue a work permit. The permit will specify the expiration date and limitations, such as the maximum allowable hour of work per day when school is in session (CalBiz, 2010).

If an SBO is interested in hiring minors, it is important that they become familiar with the laws regarding minors’ working hours. Labor law places limitations on the number and spread of

the hours a minor may work. This will vary depending on the worker's age, the industry, and the time of year. If a minor works two jobs, the combined hours should not total more than the legal number of hours (CalBiz, 2010). Additionally, SBO's should consider what restrictions the law places on the types of work the minor could perform. Minors should also be covered by workers compensation and receive minimum wage (Labor Occupational et al., 2009).

Hiring Individuals with Disabilities

When a person with a disability applies for a job, the employer must consider his or her qualifications as equally as one would other applicants. Unless the disability prevents the applicant from performing essential functions of the job, the ADA and FEHA prevents adverse action against such individuals. In order to see if a disabled individual is qualified and can perform the job, the employer first needs to determine the essential functions of the job. Essential functions of the job are basic tasks that are performed as part of the job (CalBiz, 2010). An easy way to determine the essential functions of the job is to use written job descriptions. Once this is determined, the employer may be required to provide reasonable accommodation if the applicant is qualified (CalBiz, 2010).

To be considered disabled in California, one has a physical or mental impairment that limits a major life activity, has a record of such impairment, or is regarded as having impairment. Employers, including SBO, are required to make reasonable accommodation for employees with disabilities. This may include adjusting job tasks, normal work routines, or office environment (CalBiz, 2010). However, if the employer can show that accommodating an individual with a disability would cause an undue hardship, they are not required to do so. An undue hardship involves the accommodation being too costly, extensive, or substantial. While SBO's will not be

expected to spend as much money as a large employer, SBO's are required to provide alternative accommodation if the alternative will not cause undue hardship (CalBiz, 2010).

Foreign Workers and the I-9 form

Under the federal Immigration Reform and Control Act, it is illegal to hire, refer, recruit, or retain in employment an unauthorized alien. Employers are thus required to verify that every person hired is either a United States citizen or authorized to work in the U.S. An employer can make this verification by examining documents that establish identity and employment eligibility (CalBiz, 2010). Employers should correctly complete and fill out the Employment Eligibility Verification Form (I-9) for all employees. Evidence of identity and employment eligibility should be examined within three business days after the employee begins work. The U.S. Citizenship and Immigration Service (USCIS) provide a list of acceptable documents to establish identity and employment eligibility. SBO's should make sure they have the updated I-9 form, photocopy the employee's verifying documents, and keep completed I-9 forms in a common employee file (CalBiz, 2010).

Businesses are now provided with a free tool to check worker identification. E-Verify is an online government program that compares information from the I-9 form against federal government databases to verify workers' employment eligibility. Operated by the Department of Homeland Security and the Social Security Administration, E-Verify is a free, simple way for employers to check to see if new hires are legal (Collins & Doyle, 2010). However, California business owners are not legally mandated to use E-Verify. If, after hiring an individual, it is discovered that the employee has been working without authorization, re-verify work authorization. Allow the employee to present acceptable documentation and fill out a new I-9 form. If the employee is an unauthorized alien, that employee may not continue to be employed

by the company. The employer must terminate the employment relationship to avoid penalties (CalBiz, 2010).

WARN Act

The Worker Adjustment and Retraining Notification Act requires that employees be given 60 days notice of a plant closing or mass layoffs. The employer must also notify state and local governments. To comply with California law, serve the required notice to each individual employee. If unions are involved, present the notice to the union as well (CalBiz, 2010). While the federal WARN Act applies to employers with 100 or more full-time employees, the California WARN Act applies to businesses that employ 75 or more persons within the preceding 12 months. California law does not require that they be employed full-time. It simply requires that the employer employ 75 full-time or part-time employees. Additionally, California law does not require notice of layoff of employees who understand that their employment is seasonal and temporary (CalBiz, 2010).

Last Paycheck

Federal law does not require employers to pay an employee immediately upon termination. California law, however, requires immediate payment. If an employee is terminated or laid off with no specific return date, all wages and accrued vacation are due immediately (Paydays...). According to the California Labor Code, if wages are not paid immediately upon discharge, the employer may be assessed waiting time penalties. Thus, an employer cannot make an employee wait until the next pay period to receive his or her final paycheck.

An employee that gives at least 72 hours notice of his or her intention to quit must be paid all wages and accrued vacation at the time of quitting. If 72 hours prior notice is not given and the employee quits, wages and accrued vacation must be paid within 72 hours of quitting

(California DIR, 2010). Such an employee can request that the paycheck be sent by mail and the date of mailing will be considered the date of payment. This payment must take place within 72 hours of the time of quitting. If an employee quits without giving 72 hours prior notice and has not requested the paycheck be mailed, it is the employee's responsibility to return to the office of the employer 72 hours after quitting to request his or her final wage payment (California DIR, 2010).

Required Posting

Many federal employment laws require employers to post notices regarding employment rights. Many states, including California, have additional posting requirements. Thus, California employers must meet the Federal and State requirements regarding workplace postings. Most required postings are free to employers and are available from the agency that requires them. Postings should be in an area where all employees can easily access and read throughout the workday (California DIR, 2010). Some posters have to be in an area where job applicants, in addition to employees, can easily read them.

There are also unique posters and notices that are only applicable to businesses if it meets certain criteria. Depending on the size of the business, some employers may not be required to post a specific notice. However, the majority of required postings apply to all employees, so SBO's should be aware of what must be posted and who must post. See Appendix B for more details on posting.

Safety and Health

Cal/OSHA is a division of the Department of Industrial Relations created to protect the public and, more specifically, workers from hazards in the workplace. Employers are required to

follow the laws set forth by Cal/OSHA and are subject to citations if found in violation of a Cal/OSHA regulation (California DIR, 2010).

High Hazard Employer

Every year a list is issued which contains the industries classified as “high hazard” for the year (California DIR, 2010). If a company qualifies as a high hazard under the industry list, the company is held to higher safety standards under Cal/OSHA requirements. SBO who are classified as a high hazard should contact the Cal/OSHA High Hazard Compliance Unit for consultation services. The 2010-2011 list of high hazard industries can be found online here: http://www.dir.ca.gov/dosh/HHU_List.pdf

Injury and Illness Prevention Program

Cal/OSHA requires that all employers develop and implement an effective Injury and Illness Prevention Program (IIPP) (California DIR, 2010). The IIPP should include the following sections: (1) Responsibility (2) Compliance (3) Communication (4) Hazard Assessment (5) Accident/Exposure Investigation (6) Hazard Correction (7) Training and Instruction, and (8) Recordkeeping. To be effective, the IIPP must involve all levels of employees, identify potential hazards in the workplace, correct the identified hazards in a timely manner and provide useful training to employees (California DIR, 2010). High hazard industries must follow specific standards when creating their IIPP.

Cal/OSHA has created an online eTool for employers to create their own IIPP. Employers can either print out their IIPP and write-in the necessary information (as part of the Action Kit), or enter the information into the website and create a computer typed and customized IIPP. The eTool can be found at: <http://www.dir.ca.gov/DOSH/etools/09-031/index.htm>

Recordkeeping Requirements of Cal/OSHA

Cal/OSHA requires employers to keep records related to workplace injuries. Employers who have 10 or less employees or employers who are classified as low hazard in the Standard Industrial Classification are not required to keep the records (CalBiz, 2010). Described below are the Cal/OSHA recordkeeping requirements:

Form 300: This log (Log of Work-Related Injuries and Illnesses) is used to record information related to a workplace injury. Things like the date of the incident, the employee(s) involved and the classification of the injury are filled in. There are certain injuries and illnesses, which should be reported, but the employees name should not be included on the Form 300. These cases may be related to sensitive matters such as a mental illness or sexual assault. Additionally, an employee may elect to not have their name included on the log regardless of the type of injury. In these cases, “privacy case” should be entered in the area designated for the employee’s name (California DIR, 2010).

Form 300A: All employers must complete Form 300A (Annual Summary of Work-Related Injuries and Illnesses), even if there were no work-related injuries or illnesses within the last year. The form must be posted in a place for all employees to see from February 1 to April 30 of each year for the previous year’s injuries and illnesses (California DIR, 2010).

Form 301: Form 301 is an Injury and Illness Incident Report to be used for each individual work-related injury or illness. The form is used to collect information related to the incident such as the time the incident occurred and exactly what happened prior to the incident (California DIR, 2010).

The forms must be kept for five years and updated whenever an incident is newly discovered or when a previously recorded incident’s classification should be changed (CalBiz,

2010). A workbook to help employers fill out the above forms as well as copies of the forms can be found online here: http://www.dir.ca.gov/dosh/dosh_publications/RecKeepOverview.pdf

Heat-Illness Prevention

California employers must comply with the Heat Illness Prevention Standard set forth by Cal/OSHA. This standard applies to all outdoor places of employment when employees are working outdoors (California DIR, 2010). The purpose of this standard is to protect employees who work outdoors from heat exposure. Employers must take four steps to prevent heat illness.

First, employers must provide training to all employees and supervisors about heat illness prevention. Employers must emphasize the importance of drinking water and stress the need to drink frequently in the training sessions. Additionally, all employees and supervisors must be trained on every detail of the employer's emergency response procedures. Training material should be tailored to fit the employers work situation and the employees working on the job (California DIR, 2010).

Second, employers must provide fresh water, first aid, and emergency response to all employees. Employees should be encouraged to drink throughout the day. At least one quart per hour is required or two gallons per employee for an eight-hour shift, to replace water lost by sweating. The water must be fresh, pure, cool, and easily accessible to all employees. In hot weather, employers are recommended to have ice on hand to keep the water cool (California DIR, 2010).

Third, employers must provide access to shade. Shade is blockage to direct sunlight and can be provided by umbrellas, buildings, canopies, or temporary structures that are ventilated or open to air movement. It is important for allowing the body to cool and to prevent heat illness. Using the inside of a vehicle for shade is prohibited, unless the vehicle air conditioning system is

operating. Non-agricultural employers may use cooling measures like fans and misting devices instead of shade, as long as they can demonstrate the alternative is just as effective.

Shaded areas must allow for employees to avoid contact with bare soil. Chairs, benches, sheets or towels can be provided so employees are not resting on dirt. It is not permissible for shade to be located more than ¼ mile or a five-minute walk away, whichever is shorter (California DIR, 2010). When an employee feels a preventative recovery period is needed, at least 5 minutes of rest should be allowed. Do not make them wait until they feel sick to be given access to shade. Employers must provide shade promptly if an employee requests it (California DIR, 2010). Access to shade must be permitted at all times.

Fourth, employers must provide written procedures to implement on the job to comply with the Cal/OSHA Heat Illness Prevention Standard (California DIR, 2010). At least four things should be stated in writing. First, the employer should state the plan to comply with the requirements. This includes the requirements for water, shade, first aid, and employee and supervisor training. Second, the written procedures should state how employees and supervisors should respond when an employee shows symptoms of heat illness. Third, the procedures should state how employees and supervisors are to contact medical services.

It should also say the procedures for transporting employees to a point where emergency services can reach them. Finally, clear and precise directions to the work site should be provided to emergency responders (CalBiz, 2010). These requirements for written procedures can be incorporated in a company's Injury and Illness Prevention Program (California DIR, 2010). An employer sample procedure for Heat Illness Prevention can be found at <http://www.dir.ca.gov/DOSH/HeatIllnessInfo.html>.

Cal/OSHA has jurisdiction over all places of employment to conduct an inspection. Typically, inspections are conducted based on worker complaints, reports of accidents and the hazard level of the company’s industry. There are 22 Cal/OSHA enforcement divisions within California, including several specialized units for things like asbestos and crane certification (California DIR, 2010).

Cal/OSHA Consultation

To help employers comply with the regulations, Cal/OSHA offers consultation services at no cost. A consultant will come to the employer’s workplace and answer questions regarding requirements to help the employer comply with Cal/OSHA guidelines. The department, which conducts inspections, is separate from the consultation service sector. Therefore, the enforcement office will have no knowledge that an employer is working with a Cal/OSHA consultant (California DIR, 2010).

Details regarding the specific requirements various types of employer’s are required to follow related to worker safety can be found online at the following Cal/OSHA website:

http://www.dir.ca.gov/dosh/dosh_publications/trainingreq.htm

Resources Available for SBO

Employer Resources

Below is a sample list of HR resources available to employers. Many resources are available (a) at no cost (b) at very low costs (c) via a membership fee, or (d) through private consultants and third party vendors. The authors or affiliated parties make no claims as to the quality of service or products provided.

California State Council of SHRM (CASC)	Society for Human Resource Management (SHRM)
Bay Area Human Resources Executive Council (BAHREC)	Cal/OSHA Consultation
Central Coast HR (CCHRA)	Economic Development Committees

Central Valley HR Management Association (CVHRMA)	Small Business Administration
Inland Empire SHRM (IESHRM)	Local County Office
Imperial Valley	Secretary of State (SOS)
Kern County SHRM (KCSHRM)	Asian Business Institute
Northern California HR Association (NCHRA)	Hispanic Chamber of Commerce
Northstate SHRM	Woman-Owned Small Business Program
PIHRA	Employment Development Department (EDD)
Sacramento Area Human Resources Association (SAHRA)	Service-Disabled Veteran-Owned Small Business
Santa Barbara Human Resources Association (SBHRA)	Business Incubators
San Diego, SHRM (SD SHRM)	CALED
SHRM of Tulare/Kings County	Employer Advisory Councils
Sierra Lake Tahoe	California Chamber of Commerce
San Joaquin HR Assoc (SJHRA)	
Staffing Management Association of Southern CA (SMA)	
Wine Country Human Resources Association	
Human Resources Association of Central California (HRACC)	

Training SBO and Staff on HR practices

Training Guide

This paper includes a detailed training guide and instructor/proctor syllabus. See Appendix “A” for more details.

Resilience and Overcoming Obstacles

Most Wanted

In 1988, a husband and wife (Frank and Nicole)* entered a partnership to start a construction business. Located in the Central Valley, they hired two full-time employees and five part-time employees. While small business owners in the pre-technology days, they did not own or use computers, cell phones, fax machines, or an answering machine. All of the payroll, bookwork, and taxes were calculated by hand using a ten-key calculator. Correspondence was accomplished through the use of a typewriter. While the company did not advertise, business began to grow through word of mouth and references.

* Names have been changed

While Nicole handled the bookwork and payroll, Frank played the role of owner, superintendent, estimator, and quality control person. He operated as a one-person management team and he did the physical aspect of the job as well. Eventually he learned to delegate responsibilities to qualified employees, which also contributed to the growth of the company. Frank made an earnest attempt to hire honest, conscientious employees. Due to the nature of the industry, many employees are hired for short periods of time, as jobs would become available. There were often shortages of skilled labor and it would be difficult to select qualified employees, especially when the company was hired for multiple jobs simultaneously.

One employee (Jack^{*}) was hired and Jack worked for the company on and off over a six month period. Frank had just re-hired Jack. This employee seemed like a decent worker and filled the employment gap that the company had at the time. One early summer morning, Frank woke up and turned on the news, just as he would on other mornings when getting ready for work. This day was different. On the news was Fresno County's Most Wanted, flashing full screen mug shots of each wanted person. Whose picture pops up next? It was Jack, the very worker Frank had just hired back to work three days ago!

As Frank saw Jack's picture, his initial thought was, "Hey, I think I know that guy." As he looked closer at the name, his stomach sank. Jack was supposed to be at the job site working with two other employees at 6:30AM that morning. Frank quickly called the two employees, who were already at the job site, to inform them of the news. He then called the Fresno County sheriff and reported where Jack was supposed to be working. Fortunately, Jack never did show up for work. He was arrested a week later. About six months later, while he was in jail, he sent someone to pick up his final paycheck.

Through the years, this SBO learned that with employees that are temporary and seasonal, you never know what you will get. This SBO came to realize that people might lie and embellish when it comes to skills and experiences. Thus, they learned that had to get more detailed when going through the interview process. Additionally, this SBO kept up-to-date with regulations by being very hands-on with the business. At times, the company employed 35-40 employees. Occasionally, only two to three employees were kept. While the recession hit many industries hard, construction businesses were some of the most severely impacted. However, this SBO proved resilient. When asked the secret to the company's success, Frank replied, "I kept close track of profit and loss, and I made sure we did not grow too big too fast because we didn't want to incur too much debt. But most importantly, we did not take shortcuts. Just be honest, because that's the kind of reputation I associate with success."

Capitalizing on a Personal Touch

Tim, a local business owner in the agricultural industry, started a corporation with one partner (Jane) a few years back. The business related to chemical product testing on various crops and the company was a consultant to various companies across the United States. The industry Tim was involved in was relatively small so establishing a good reputation for the business was extremely important. Prior to starting the corporation Tim had little experience in the many aspects of owning business, but Jane and him were able to deliver quality service and build a client base rather quickly.

One day, however, Jane abruptly decided to leave the business to begin a new company. Tim had no idea how to react the stressful news and initially thought the corporation would not be able to continue. After much consideration though, Tim decided he would fight for the corporation he had become so deeply invested in. Tim knew Jane would be taking quite a bit of

the workload with her to her new company and immediately began marketing his restructured business. Tim called all of his current clients immediately to inform them of the change but assured all of them the work would still be completed and up to standard. It took a full year to transition to the sole shareholder of the corporation, but it gradually became evident that the business would make it.

Reflecting back on one of the most stressful times as a small business owner, Tim has no doubt that one of the main reasons the business was able to survive was because he strived to maintain a high reputation in the industry. Tim suspected that if he was honest with his clients and worked to complete his workload on time, his clients would be loyal to him—and he was right. Tim believes one of the biggest advantages a small business can have over larger companies is a personal touch. A personal touch to Tim is not simply smiling at every customer, but building a genuine relationship with customers and working hard to present the best possible product or service. Tim's story is a great example of resilience in the world of small business.

Alive and Growing

Gary* worked as a one-man show before he hired Lloyd*. Together, the two had so much business that they decided to form a partnership in 1980. Within the first year, their business grew so quickly that they had to hire new employees immediately. Today, after a tremendous amount of growth, they operate as the largest professional services firm in their industry in southern California.

What helped this firm be so successful, even during the difficult recession? What obstacles did this firm have to face?

* Name has been changed

Lloyd listed several principles that contributed to the company's success. First, the company sticks to its EGADs. What are EGADs you may ask? It is an acronym for Expectations, Goals, Attitudes, and Desires. Before the firm hires new employees, they try to understand a person's EGADs to see if it matches with the company's EGADs. For example, the company's Attitude about work involves working hard and reaping the benefits of hard work, its Desires and Goals are growth oriented, and its Expectations are realistic. Thus, if applicant's goals were not congruent, the company would not hire them. This became an important framework in the company's hiring policies.

Another item the company looks for is initiative and creativity. This is important for the type of industry they are in. Lloyd says that sometimes he will ask someone to do something or get something done. Some people ask many questions. However, Lloyd says he does not always know what he wants and he is really leaving it up to the employee to figure it out. He is often heard telling his employees, "Just make me a salad! I do not care if you put tomatoes or strawberries or cucumbers in it. Just make it." Lloyd explains that when he uses this expression, he is encouraging his employees to be creative. This expression encapsulates a type of thinking that the company is looking for.

Along with its growth strategy, the company went through a merger. The original partners were interested in doing this because the other firm had clientele unreachable to the company. After completing the merger, the company successfully bought the client base it was interested in. In addition to clientele, the company also took on the people from the merging firm. However, half of them did not match the company's EGADs and were eventually let go. On top of that, the company had several issues with a senior partner that came from the merged firm. Eventually, the company would ask this partner to leave. While Lloyd described this as a

traumatic event because it was the first time a partner was asked to leave, he believes that it had to be done and it was the right thing to do for that individual and for the firm. By being honest with people, Lloyd trusts that most people will understand and respect tough decisions.

Lloyd said that he learned much of his business sense from past mistakes. He said, “You learn very quickly when you have to shell out the money and pay for something you blew.” However, making mistakes has never stopped him from learning or correcting a situation. While California employers have many laws to comply with, Lloyd suggests that SBOs, “Do the best you can to comply, but don’t operate under the basis of fear of being sued...If you blew a law, go back and fix it.” He also said that self-educating and doing a lot of business reading not only gave him new ideas but also contributed largely to his success.

Before the recession, the company employed over 80 people. However, Lloyd described the recession that began in 2008 as one of the worst ever. During the recession, the company had to make cuts. They cut all the unnecessary expenses and frills and had to cut nearly 40% of the staff. They also asked employees to take pay cuts. However, all of the partners took a cut in pay before requesting this of the employees. While this was difficult for the staff, the company was able to keep the best people, never missing a paycheck. The company also proved resilient through difficult times because each business partner was diligent in marketing to clients over several market sectors. The company made sure not to operate in a narrow market sector. Rather, much of the success can be attributed to its ability to jump into other market sectors quickly. Today, they are once again very busy, hiring additional staff, and working hard to pay employees back for their dedication through difficult times. Through difficult times, the company was able to survive and it is alive and growing.

When asked what recommendations he could give to other SBO's, Lloyd said, "You have to know yourself and be willing to take intelligent risks. You have to know how you define success and know that this definition will change over time, but I think that is important. You always have to learn and improve. That's how you define growth." Most importantly, Lloyd recommends that other SBO's to "Have a good time too. I love what I do and when your employees see that enthusiasm, it incites and encourages them."

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Lauren Velarde is a student at California State University, Fresno. She will graduate in May 2011 with her Bachelor of Science in Business Administration with an option in Human Resource Management. She participated in the HR Games, is an active member of Craig School Business Scholars, and serves as the Director of Public Relations in the student chapter of the Society of Human Resource Management (SHRM). During the course of writing this paper, she came to appreciate the realistic application of the knowledge gained from the classroom as well as the wide array of laws California small business owners are required to comply with. A California native, she enjoys playing the piano, salsa dancing, and reading the Bible. She would like to thank her parents, Nick and Mindy, and her sister Allie, for all their love; and to Jonathan for always being there for her.

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Appendix

Appendix A: California Training Guide



**SMALL BUSINESS OWNER (SBO)
HUMAN RESOURCES TRAINING GUIDE
FOR CALIFORNIA EMPLOYERS**

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OVERVIEW

Small businesses (generally those employing less than 500 people) in the United States are the backbone of the U. S. economy. Based on data from the U. S. Department of State, 52 percent of all U. S. workers are employed by small businesses. Of those, over 19 million U. S. employees work for companies employing fewer than 20 workers. Many small businesses operate without employing a human resource professional to help them understand and comply with the myriad of employment laws that apply to them. This guide outlines the type of training in human resource management concepts and practices that small business owners need to know to manage their staff in a fair and consistent manner. The training course is not intended as legal advice and the authors recommend that business owners seek appropriate legal counsel to review their employment policies and practices.

ABOUT US

The California State Council of SHRM (CASC) is the largest state council in the United States. CASC is an affiliate of the Society for Human Resource Management (SHRM), the 7th largest non-profit organization in the U.S. with 250,000 members nationally and internationally. CASC has 20,000 HR Professional in California.

In 2007, CASC developed the first ever, statewide exam for HR certification. California has the most stringent labor law system in the United States. Both SHRM and the Human Resource Certification Institute (HRCI) realized the extensive regulatory environment found in California. Consequently, SHRM and HRCI gave approval for the creation of the California specific examination and certification of the body of knowledge that comprises the State's employment laws. CASC has become a recognized leader for HR in California. With this extensive knowledge and experience, we have developed this Small Business Owner Human Resources Training Guide. California employers are subject to both federal and state employment laws and the training courses will address when federal and state laws differ and when state laws take precedence over federal laws.

RECOMMENDED TRAINING MODULES - Three (3) total below

Hire Right the First Time: This class reviews common pitfalls in the hiring process and demonstrates proper interviewing techniques. Learn which questions are appropriate during an interview and which questions you should never ask. Make informed hiring decision by performing structured, behavioral interviews, completing proper reference checks, and assessment. This class provides tips and tools to help you hire right the first time. Total Time: Four (4) hours

Class Objectives

- Learn how to perform an interview (structured/behavioral).
- Understand legal concerns and laws that affect hiring/selection
- Learn methods to improve your hiring skills and maintain control of the interview
- Learn how your culture and mission should influence your hiring methods
- Identify key stakeholders should participate in the interview and why

Topics

- Why retention matters and what is the cost of turnover
- Legal concerns during the hiring/selection process
- Resources available for recruiting and how/where to advertise job openings
- Developing a structured interview and pre –planning for the interview
- Key indicators of honesty and accuracy of past performance
- Reference and background checks

Operating Successfully Within the Regulations: How to maintain compliance and grow your business!

This class reviews the regulations that influence HR decision-making and how compliance provides a competitive advantage for your business. Total Time: Eight (8) hours

Class Objectives

- Learn current regulations that affect your HR decision-making
- Learn how to obtain compliance resources that save you time and money
- Understand how compliance can lead to a competitive advantage
- Identify how technology is affecting compliance

Topics

- Employment/HR regulations (Federal)
- Employment/HR regulations (State)
- Employee Handbooks and Policies/Procedures
- Enforcement Agencies and Non-Compliance Penalties
- Incorporating technology (compliance software) into your compliance program

Managing Employee Performance: This class will review techniques to motivate and improve employee performance. Learn best practices that drive employee performance and efficiency.

Total Time: Six (6) hours

Class Objectives

- Learn how to establish performance goals and standards (metrics)
- Learn motivation techniques that are employee specific
- Identify and effectively counter common excuses for poor performance
- Implement a progressive disciplinary program
- Learn legal and union concerns that affect corporate performance

Topics

- Employee performance management and change agents
- Establish metric for measuring performance
- What a performance appraisal should include
- Handling feedback (positive/negative) on your performance program
- Encouragement of continuous learning
- Methods to handle underperforming personnel

*Appendix B: Federal and State Required Posters***WORKPLACE POSTINGS**Updated [12/02/2010](#)

Copies of workplace postings are available by clicking the hyperlinks below. Additional posters may be required depending on specific industry types and local regulations.

California Posting Requirements: California DIR (2010, p. 1)

Posting	Additional information and quantity needed	Who must post
Industrial Welfare Commission (IWC) wage orders (17 total)	IWC wage orders regulate wages, hours and working conditions and are numbered by industry or occupation group. Not sure which order you need? Use the alphabetical index of businesses and occupations to make that determination. Labor Code section 1183(d)	All employers
Minimum wage (state)	Sets forth California's minimum wage and can be downloaded in English and Spanish .	All employers
Payday notice	Must specify the regular paydays and the time and place of payment. An employer-developed notice is permitted. Labor Code section 207	All employers
Safety and health protection on the job	Contains pertinent information regarding safety rules and regulations. Available in English and Spanish . Labor Code section 6328; poster print date: Feb 2010	All employers
Emergency phone numbers	Lists emergency responders' phone numbers. Title 8, California Code of Regulations, Construction Safety Orders section 1512 (e)	All employers
Access to medical and exposure records	Provides information about rights of employees working with hazardous/toxic substances. Available in English and Spanish . Title 8, California Code of Regulations, General Industry Safety Order section 3204	All employers using hazardous or toxic substances
Operating Rules for Industrial Trucks	Employers using industrial trucks shall post and enforce a set of operating rules. Available in English and Spanish . Poster print date: April 2007	Employers operating forklifts and other types of industrial trucks or tow tractors
Notice to employees -- injuries caused by	Advises employees of workers' compensation benefits. Claims administrators and employers need to revise the notice they are currently using and send it to the DWC .	All employers

work	<p>administrative director for review and approval or they may download and use this version. NOTE: Employers may obtain professionally printed copies of the poster and workers' comp claim form from their claims administrator.</p> <p>Title 8, California Code of Regulations, Division of Workers' Compensation section 9881</p>	
Notice of workers' compensation carrier and coverage	<p>States the name of the employer's current compensation insurance carrier, or the fact that the employer is self-insured. Obtained from the employer's workers' compensation insurance carrier.</p> <p>Labor Code section 3550</p>	All employers
Whistleblower protections	<p>Must be prominently displayed in lettering larger than size 14 type and include a list of employee rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline maintained by the office of the California Attorney General.</p> <p>The Division of Labor Standards Enforcement has prepared a sample posting that it believes meets the requirements of Labor Code Section 1102.8(a), except for being larger than size 14 type. To view this sample, click here This sample is not the only option though, as employers are free to develop their own posting.</p> <p>Labor Code section 1102.8</p>	All employers
No smoking signage	<p>Signage must be posted designating where smoking is prohibited/permitted in a place of employment. This law is enforced by local law enforcement agencies.</p> <p>Labor Code section 6404.5(c)(1)</p>	All employers
Log and summary of occupational injuries and illnesses	<p>Form 300 is for logging recordable injuries, form 301 is for collecting details and form 300A is the annual summary form. All three forms are available in various downloadable formats with instructions on the Cal/OSHA publications page.</p> <p>Title 8, California Code of Regulations, Division of Labor Statistics and Research sections 14300 et seq.</p>	Employers with 11 or more employees in the previous year
Prop 65 (Safe Drinking Water and Toxic Enforcement Act)	<p>Proposition 65 - Safe Drinking Water and Toxic Enforcement Act – “Warning – Known cancer causing agents may cause birth defects, etc.” Wording may vary.</p>	This is typically posted at gas stations, chemical facilities, and other areas where exposure to cancer causing agents is possible
Farm labor contractor statement of pay rates	<p>Reference DLSE poster 445. Must be displayed prominently where work is to be performed and on all vehicles used by the licensee for transportation of employees. Must be at least 12 inches high and 10 inches wide.</p> <p>The downloaded version of this posting may not comply with the law as it may not be at least 12 inches high and 10 inches wide.</p> <p>Labor Code section 1695(7)</p>	Farm labor contractors licensed by the Division of Labor Standards Enforcement (DLSE)
Prevailing wage rate determinations	<p>The body awarding any contract for public work or otherwise undertaking any public work shall cause a copy of the prevailing wage determination for each craft, classification or type of worker needed to execute the contract to be posted at each job site.</p>	Public works awarding bodies and contractors

	Labor Code section 1773.2	
Pesticide Safety Series	Department of Pesticide Regulations	All employers using pesticides

Additional California and Federal Posting Requirements (this list is not all-inclusive): California DIR (2010, p. 1) and U.S. Division of Labor. (2010, p. 1)

Posting	Additional information	Who must post
Discrimination and Harassment in Employment are Prohibited by Law	The latest information can be obtained from the Department of Fair Employment and Housing (DFEH) , reference number 162, available in English and Spanish. 1 (800) 884-1684 Fair Employment and Housing Act, Government Code section 12900 et seq.	All employers
Pregnancy disability leave	The latest information can be obtained from the Department of Fair Employment and Housing (DFEH) , reference notice A. 1 (800) 884-1684 Title 2, California Code of Regulations section 7291.16(d)	Employers of five to 49 employees
Family care and medical leave (CFRA leave) and pregnancy disability leave	The latest information can be obtained from the Department of Fair Employment and Housing (DFEH) , reference notice B. 1 (800) 884-1684 Title 2, California Code of Regulations sections 7297.9 and 7291.16(e)	All employers with 50 or more employees and all public agencies
Notice to employees	Advises employees of potential unemployment insurance, disability insurance and paid family leave insurance benefits. The latest information can be obtained from the Employment Development Department , reference number DE 1857A; also available in Spanish, Vietnamese, and Chinese. (916) 322-2835.	All employers
Notice to employees: unemployment insurance benefits	The latest information can be obtained from the Employment Development Department , reference number DE 1857D; also available in Spanish, Vietnamese, and Chinese. (916) 322-2835.	All employers
Notice to employees: time off to vote	Not less than 10 days before every statewide election, every employer shall keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of section 14000 .	All employers

	Elections Code section 14001 et seq.	
Equal employment opportunity is the law	Includes Americans with Disabilities Act (ADA) poster. The latest information can be obtained from the U.S. Equal Employment Opportunity Commission . 1 (800) 669-3362	All employers
Minimum wage (federal Fair Labor Standards Act)	The latest information can be obtained from the U.S. Department of Labor , reference number WH 1088. (415) 744-5590	All employers
Notice: Employee Polygraph Protection Act	The latest information can be obtained from the U.S. Department of Labor , reference number WH 1462. Also available in Spanish. (415) 744-5590	All employers
Family and Medical Leave Act (federal FMLA)	The latest information can be obtained from the U.S. Department of Labor , reference number WH 1420. Also available in Spanish . (415) 744-5590	All employers with 50 or more employees and all public agencies
USERRA - Uniformed Services Employment and Reemployment Rights Act (federal Veteran's Employment and Training Service)	The latest information can be obtained from the U.S. Department of Labor , reference number WH 1420. Also available in Spanish.	All employers
MSPA (federal Migrant and Seasonal Agricultural Worker Protection)	The latest information can be obtained from the U.S. Department of Labor , reference number WH 1420. Also available in Spanish.	All employers with Agricultural Employees
Employee Right for Workers with Disabilities/Special Minimum Wage Poster Wage and Hour Division 29 CFR 525.14 • En Español	Where an employer finds it inappropriate to post such a notice, the employer may provide the poster directly to all employees subject to its terms.	Every employer having workers employed under special minimum wage certificates authorized by section 14(c) of the Fair Labor Standards Act.
Notice to all Employees Working on Federal or Federally Financed Construction Projects (Davis-Bacon Act) Wage and Hour Division 29 CFR 5.5(a)(I) • En Español	The contractor or subcontractor is required to insert in any subcontract the poster requirements contained in 29 CFR 5.5(a)(I). The poster must be posted at the site of work, in a prominent and accessible place where it can easily be seen by workers.	Any contractor/ subcontractor engaged in contracts in excess of \$2,000 for the actual construction, alteration/repair of a public building or public work or building or work financed in whole or in part from federal funds, federal guarantee, or federal

		pledge which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1.
<p>Notice to Employees Working on Government Contracts (Service Contracts Act) Wage and Hour Division 29 CFR 4.6(e), .184</p> <ul style="list-style-type: none"> • En Español 	Contractors and any subcontractors engaged in federal service contracts exceeding \$2,500 shall notify each service employee or post the minimum monetary wage and any fringe benefits required to be paid pursuant to the contract.	Every contractor or subcontractor engaged in a contract with the United States or the District of Columbia in excess of \$2,500 the principal purpose of which is to furnish services in the U.S. through the use of service employees.
<p>Notification of Employee Rights Under Federal Labor Laws. Office of Labor-Management Standards Executive Order 13496; 29 CFR Part 471</p>	The notice, prescribed in the Department of Labor's regulations, informs employees of Federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. Additionally, the notice provides examples of illegal conduct by employers and unions, and it provides contact information to the National Labor Relations Board (www.nlr.gov), the agency responsible for enforcing the NLRA.	Federal contractors and subcontractors are required to post the prescribed employee notice conspicuously in plants and offices where employees covered by the NLRA perform contract-related activity, including all places where notices to employees are customarily posted both physically and electronically.

Note: There may be other posters required due to recent legislation changes or local ordinances.

Frequently asked questions about workplace postings

1. Is it legal to download and post the Internet version of the IWC orders and other postings?

Yes. Posting the wage orders and other postings downloaded from the Internet is legal.

2. Do I have to replace postings every year? How will I know when I need to replace them?

You only need to replace a posting when its content changes. Once established, the language of almost every required posting stays the same. The exception is the IWC wage orders, which are updated annually with an adjustment to the hourly wage required for computer professionals to be exempt*.

The IWC orders posted on the Internet are indexed by date, so a periodic check of the list will

let you know if you have the most current version.

Additionally, the DIR will announce posting updates on its [home](#) and [what's new](#) page when they occur.

*According to California Labor Code section 515.5(a)(3), the Division of Labor Statistics and Research is required to adjust the hourly base rate of pay for computer software employees as set forth in section 2, “Applicability of Order”, of the Industrial Welfare Commission wage orders. This base rate of pay is only one factor used by employers to determine whether computer software employees are exempt from the provisions of the order. Employers with exempt computer software employees must post the annual wage update.

3. Is it legal to put postings in a binder if I don’t have room to post materials?

Yes, but only under special circumstances. Some situations where this could be acceptable are a construction site where there is only an on-site trailer, or an agricultural site where the workplace is outdoors. If employers put postings in a binder, they must tell employees where the binder is located, have the binder available for employees, ensure employees have easy access to postings and don’t have to walk a long distance or ask to see the material.

Source

California DIR. (2010). *Workplace postings*. Retrieved from

(<http://www.dir.ca.gov/wpnodb.html>)

U.S. Division of Labor. (2010). *Workplace poster requirements for small businesses and other*

employers. Retrieved from (<http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm>)

Appendix C: Sample Workplace Inspection Form

Cal/OSHA Consultation has developed the following *User’s Guide to Cal/OSHA* booklet that is very useful to employers. This booklet can assist employers with workplace inspections and is available: http://www.dir.ca.gov/dosh/dosh_publications/osha_userguide.pdf. Included below is a sample inspection sheet that SBO can modify to fit their business.

WORKPLACE HAZARD IDENTIFICATION CHECKLIST

Location: _____ Area: _____

Inspected By: _____ Date: _____

This checklist is to be completed on a scheduled periodic basis at least monthly or as directed by the organization's policy. Mark potential hazards according to your judgment. Check all items that apply, and make comments on the back of this page. Send a copy of this report to the person responsible for the safety program. Document corrective action taken later on a separate report. Keep this record for at least a year.

Condition Reviewed	Yes	No	N/A	Completed
Are employees trained on applicable safety regulations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are employees trained what to do in the event of an Emergency?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are all required postings mounted on bulletin boards or other appropriate locations, and is the company specific information completed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are all work areas kept clean (Housekeeping)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are restrooms maintained sanitary?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are Material Safety Data Sheets (MSDS) available for review?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are hazardous material containers and piping labeled or marked to identify the material or hazard?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are all emergency exits labeled and kept clear?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

