

Ten Hot Tips For Today's Landlords and Property Managers: How To Stay Out Of Trouble With Your Employees in California

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Proactive, up-to-date and consistent employment policies go a long way toward avoiding costly litigation later. Here are ten “hot tips” for keeping out of trouble – and staying there. This is not an exhaustive list, of course. Employers must remain vigilant to stay informed of state and federal labor laws, ongoing legislative action and court decisions, all of which affect an employer’s legal obligations.

HOT TIP #1: KEEP COMPANY POLICIES AND HANDBOOKS UPDATED

It is crucial to update your company’s employee handbooks and policies to reflect not only changed practices and procedures within your company, but also changes in the law. It is especially important to check for new and amended laws that apply to your company’s employees before the new calendar year, since many legislative changes become effective on January 1. While you are at it, remember to replace your wall-posters at the start of every calendar year, as needed. These posters are available from various sources, including the California Chamber of Commerce and the specific enforcement agencies, such as the California Department of Fair Employment and Housing and the Department of Labor Standards Enforcement.

HOT TIP #2: CAREFULLY DOCUMENT EMPLOYEE PERFORMANCE AND CONDUCT PROBLEMS

Avoid grief down the road by carefully and habitually documenting your employees’ performance as well as any incidents of misconduct. It’s a good idea to keep complete and accurate documentation of all performance-related communications with your employees.

HOT TIP #3: IMPLEMENT AN EMPLOYEE INTERNET USAGE POLICY

While no employer is required to have an Internet policy, it’s probably a good idea. Problems arise when employees use work time to surf the web, or access gambling, pornographic or other potentially harassing sites. If you do establish a written policy, especially if you set firm limits on the amount and type of Internet use, be clear about what is and is not allowed, and consistently enforce the policy. Inform your employees – in writing and repeatedly – if the company intends to monitor their Internet usage. Have your employees sign and date an acknowledgement that they have reviewed the Internet policy.

HOT TIP #4: PROVIDE YOUR EMPLOYEES – AND MANAGEMENT – WITH REGULAR SEXUAL HARASSMENT TRAINING

Sexual harassment claims are still keeping attorneys busy. Make sure your new hires acknowledge receipt and review of your company's sexual harassment policy. Regularly distribute your company's sexual harassment policy to current employees and management for review. Merely adopting and reviewing your sexual harassment policy is not good enough: Provide appropriate, regular training. If you learn of a complaint, promptly and thoroughly investigate, document your investigation in writing, and take any necessary remedial measures.

HOT TIP #5: BE ALERT FOR POTENTIAL DISABILITY CLAIMS AND BE PREPARED TO ENGAGE IN THE “INTERACTIVE PROCESS”

Your on-site manager calls to tell you that she needs her hours changed in order to attend physical therapy appointments three times a week for a non-workers' compensation covered disability. What are your responsibilities?

In the disability context, it is a separate violation of California's Fair Employment and Housing Act (FEHA) for an employer to fail to engage promptly in an “interactive process” once an employee or job applicant requests a reasonable accommodation – even if you subsequently offer the employee an accommodation or correctly conclude that no accommodation is possible. Your obligation to engage in the interactive process is triggered whenever an employee informs you that he or she has a disability and requests an accommodation. Notify your employees (in writing) to inform you whenever they have a disability that affects their ability to perform their jobs. Train your managers and supervisors on what to do when they receive a request for an accommodation, and standardize your documentation methods and procedures for handling accommodation requests to ensure that nothing falls through the cracks. Seek outside advice if a reasonable accommodation is not immediately apparent. Finally, remember that California's protection for the disabled under FEHA covers anyone whose condition merely “limits” a major life activity – a far broader standard than the federal Americans With Disabilities Act (ADA), which covers impairments that “substantially limit” a major life activity. Review and revise your policies to make sure that they conform to state law and not just the federal ADA.

HOT TIP #6: DOCUMENT THAT YOUR EMPLOYEES ACTUALLY TOOK THEIR STATE-REQUIRED MEAL AND REST PERIODS

California employers are generally required to provide non-exempt employees with a thirty-minute rest period for every five hours of work, and a ten-minute rest period for every three to four hours of work. Failure to do so, or failure to keep records which show when your employees actually took these periods, can result in a penalty of one hour's wages for each day that a rest or meal period is not permitted in accordance with the State's extremely complex and technical requirements. And no, your non-exempt maintenance person or groundskeeper may not work through the required rest period in

order to leave work early. Finally, provide a suitable place for your employees to take their rest periods – not their work stations or the restroom.

HOT TIP #7: DOUBLE-CHECK THAT YOU ARE COMPLYING WITH CALIFORNIA'S NEW PAID FAMILY LEAVE REQUIREMENTS

As of July 1, 2004, eligible employees may receive six weeks of partial salary replacement in a 12-month period to care for immediate family members with serious health conditions or to bond with a new child. The new law explicitly recognizes the family relationships created by domestic partnerships. These new benefits do not confer any additional leave rights on employees, and benefits are paid directly from the State. Although employers pay taxes toward Family Temporary Disability Insurance, or FTDI, employers do not have to pay employees on leave who receive benefits under this program. Be sure to post the FTDI "Notice to Employees" and give the FTDI brochure to employees who are hired after January 1, 2004, or who request leave for FTDI purposes.

HOT TIP #8: MAKE SURE YOUR ARBITRATION AGREEMENT COMPORTS WITH RAPIDLY CHANGING LAW

Many employers include a provision in their employee handbook or job application materials requiring the employee to arbitrate any disputes arising out of the employment relationship. Employers should review their arbitration provisions as California law has changed dramatically in the past few years. To require your employee to arbitrate employment disputes, generally you must have the employee sign the arbitration agreement (and re-sign in the event the agreement is later revised or updated). The agreement itself must be even-handed in its application, and should provide for the neutrality of the arbitrator, adequate discovery, and written decision that will permit a limited form of judicial review. Be prepared to shoulder the entire cost of the arbitration.

HOT TIP #9: CONSIDER ALTERNATIVES TO A LAYOFF

As with most situations in business, there are alternatives to laying employees off. For example, you may consider reducing compensation and/or hours, imposing furloughs, or offering early retirement incentives or buyouts. Each option offers potential benefits to both employer and employee, and if done carefully, allows you to avoid the risks of a layoff.

HOT TIP # 10: IF TERMINATING AN EMPLOYEE, ASSESS YOUR COBRA AND ERISA OBLIGATIONS

Whenever terminated employees participate in group health care, stock option and/or retirement plans, an employer must also be aware of its obligations under COBRA and ERISA. The Department of Labor has issued new sample COBRA Notices. You should review your COBRA notification materials to ensure they comply with both COBRA and Cal-COBRA requirements.

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