



## Employment Auditor's Notepad

### MEAGAN'S LAW AND YOUR HIRING PRACTICES

Employers frequently use third-party vendors to conduct background checks before hiring prospective employees. In *Mendoza v. ADP Screening and Selection Services, Inc.*, the California Court of Appeal ruled that an employee screening service has a constitutional right to disclose to employers information that is contained on a "Megan's Law" website.

Mendoza sued ADP, claiming that its use of the Megan's Law website was improper in that it was used to deny employment. The court dismissed the complaint holding communication of information on the website is constitutionally-protected free speech.

The court noted Mendoza's case would be more appropriately brought against the prospective employer. An employer may use the information on the Megan's Law website "to protect a person at risk" for employment purposes.

Therefore, employers should carefully consider whether to allow a third-party background investigator to disclose information that it finds on the Megan's Law website.

*Fleming PC regularly conducts employment compliance audits.*

## Employers May Deduct From Leave Bank, not Salary, When Exempt Employee Takes a Partial Day-Off

The California Department of Labor Standards Enforcement recently issued a new Opinion Letter confirming its position that partial day deductions from leave bank of an exempt employee is permissible under California law and does not cause the loss of exempt status for such employees. Additionally, the Opinion Letter makes it clear that employers may deduct leave in less than four-hour increments from sick leave and vacation banks. This Opinion Letter discusses *Conley v. PG&E*, a 2005 California Court of Appeal case that approved partial day leave bank deductions in four-hour increments. However, this Opinion Letter explains that neither *Conley* nor any California or federal regulation precludes deductions from vacation or sick leave banks in increments of less than four hours.

The Opinion Letter reminds employers that although it is permissible to dock an exempt employee's leave bank for a partial day absence, it is not permissible to dock that employee's salary for a partial day absence. Exempt employees are entitled to a full day's salary for any day in which they perform work. The Opinion Letter does not discuss, but it is worth mention, that salary deductions for full day absences are permitted if the employer has a bona fide sick leave or vacation policy and the employee has exhausted his rights thereunder. However, any exempt employee who has no vacation or sick leave may not have his/her paycheck affected if that employee takes only a partial day off.

While the Opinion Letter is limited to the facts and circumstances described in the employer's request, all California employers can use the Opinion Letter for general guidance, security, and direction when faced with exempt employees taking partial days off work. Specifically, employers may, with relative certainty, deduct leave in less than half-day increments from the exempt employee's sick leave and vacation bank. On this subject, the Labor Commissioner's interpretation of California law is consistent with federal law, and provides employers more flexibility in making necessary deductions from exempt employees' leave banks.

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