

LEGAL NEWS

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SOME COMMON QUESTIONS ABOUT EMPLOYMENT LAW

By Nancy A. Chillag and Gary Brainin, Attorneys

Q: I know that I have to pay hourly employees overtime if they work more than 40 hours a week or 8 hours a day. I have some hourly employees who would like to "flex" their time—work longer some days and shorter others, but still stay under 40 hours. Can I allow this without having to pay overtime?

A: Not easily. For a short time, between 1997 and 2000, California eliminated the 8-hour day overtime requirement, leaving only the 40-hour week. Back then, as long as you stayed under 40 hours total for the week, you could adjust time as necessary.

On January 1, 2000, the law changed again, to "bring back the 8-hour day." While the law does make some provision for flexible schedules, there are voting and documentation requirements, and it is difficult if not impossible to do if the "flexible" schedule will not be the same each week.

Q: During the interview process, a job applicant comes in with a visible disability that makes me wonder if he can do the job I'm trying to fill. Can I ask that he demonstrate how he'll do the job?

A: The laws that cover this situation are the Americans with Disabilities Act (ADA), and its California equivalent, the Fair Employment and Housing Act (FEHA). These laws are designed to protect people with disabilities against unfair discrimination based on people's perceptions of their disability.

The ADA and FEHA don't say that you have to hire anyone, regardless of whether they can perform the job. But they do say that you have to make "reasonable accommodations" for people's disabilities to make performance possible.

To avoid potential problems, it is important to treat all job applicants alike, regardless of whether they have—or you think they have—a disability. You may require all job applicants to demonstrate their skills as part of the hiring process, but singling out disabled applicants is asking for trouble.

You may ask some limited questions about reasonable accommodations if the requirement for those accommodations is obvious, or is volunteered by the applicant.

Q: One of my employees needs to take a long leave of absence. She also has a lot of vacation time built up. Do I have to let her take both?

A: There are a number of laws that require employers to allow leaves of absence. Whether you are required to allow such a leave depends on the number of employees you have and the reason for the leave.

In general, legally-required leaves are unpaid; you are not required by law to continue paying the employee's salary during the leave period. However, the employee may choose—or the employer may require—that leaves of absence run concurrently with the use of any vacation or sick time.

In other words, either you or your employee can opt to use up vacation and/or sick time during the leave, without extending the length of the leave as required by law. If you do intend to require the use of vacation or sick time in this manner, it is best that this policy be clearly stated in your employment manual.

Visit the Law Office of Nancy A. Chillag on the web at www.chillag.com. Ms. Chillag is an associate member of NTMA.