



**Sweeney, Mason,
Wilson & Bosomworth**
A Professional Law Corporation

PREVENTING EMPLOYEE LAWSUITS



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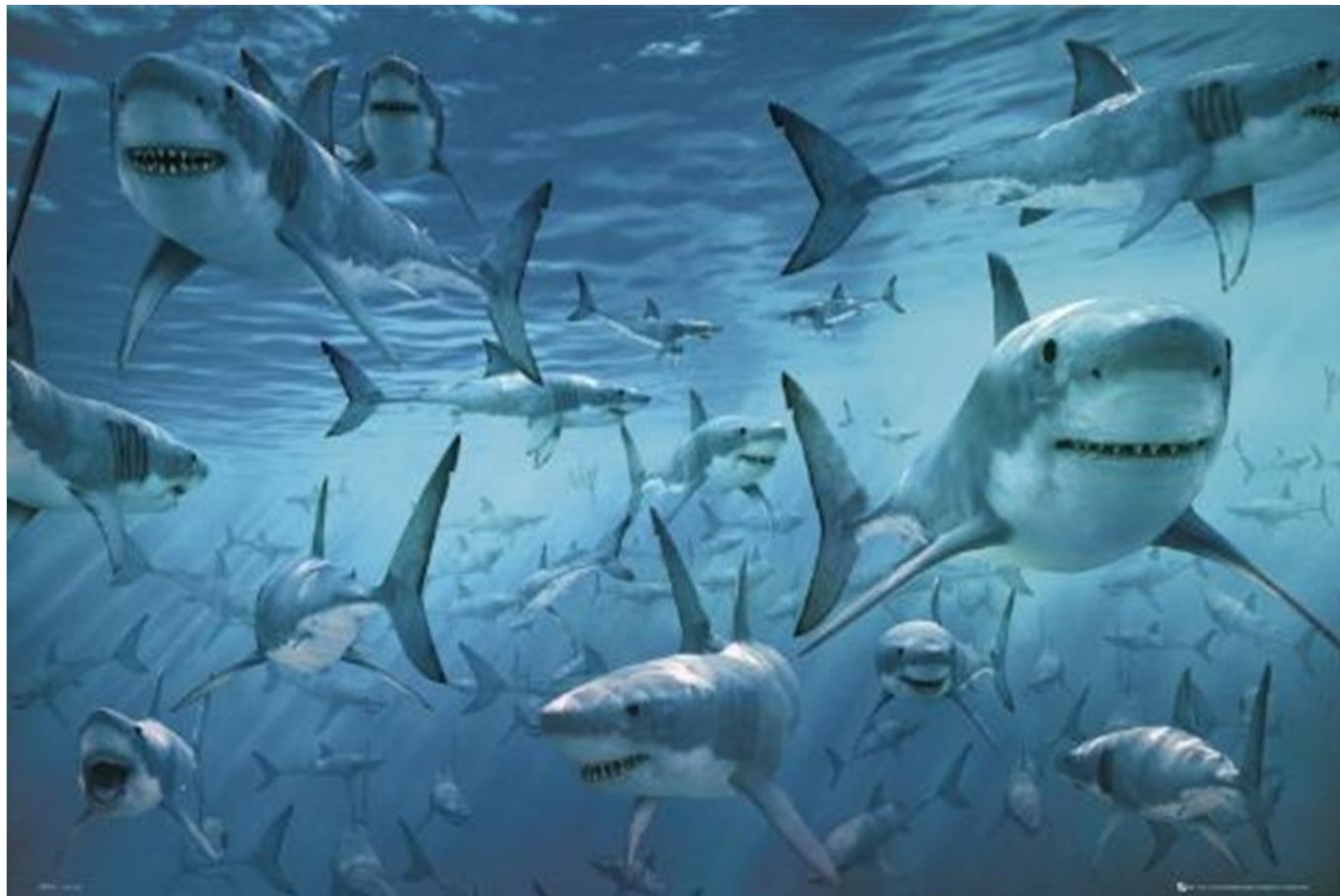
A Little Bit of Math



Incredibly complicated labor laws
+
Significant penalties/attorneys' fees
+
Employee avarice/economic stress
+
Alternative facts
+
Lack of loyalty
+
Litigation culture
=

Employment Lawsuit Epidemic









Employment Application Dos & Don'ts



DON'T ASK:

- Date of birth or dates of school attendance or graduation;
- Marital status, including maiden name;
- Race, ancestry/ethnic identity, including place of birth;
- Sexual orientation, gender expression, or gender identity;
- Pregnancy status or number of dependents;
- Citizenship or immigration status;
- Disability or medical conditions;
- Religious affiliation;
- Criminal arrests.



Employment Application Dos & Don'ts



DO ASK:

- Ask for past employers and references;
- Ask if you may contact prior employers for reference;
- Include a statement that false material facts shall be grounds for immediate discharge;
- Include an authorization to investigate any references, work record, education, or other matters related to the applicant's suitability for employment
 - Including an authorization for the references listed to disclose any relevant information without prior notice.
- Include an at-will statement;
- Include a consent to drug testing;
- Include a statement regarding background checks.



Employment Application Dos & Don'ts



DO ASK:

- Ask whether the applicant is able to perform the essential functions of the job, either with or without a reasonable accommodation. If they answer no, ask that they describe the functions that cannot be performed. Add a statement that you complied with disability laws and will consider reasonable accommodation measures that may be necessary.
- Include a statement that hiring may be conditioned upon passing a medical exam and a skill and agility test.



Offer Letters



- Description of the job
- At-will employment designation
- Commission terms if applicable
- Confidentiality provisions
- Mandatory arbitration



Drug Testing



- California permits employers to require a suspicionless drug test as a condition of employment
- Must be implemented and conducted in a fair and consistent manner to all applicants.
- What about Prop 64?



Background Checks



- In-house background checks
 - ✦ Subject to provisions of ICRAA
 - ✦ Notice to employee required
- Use of social media
 - ✦ Search only publicly available content
 - ✦ Separate the researcher from hiring manager
 - ✦ Design a uniform searching policy
 - ✦ Notify the candidate of intent to search publicly available social media
 - ✦ Restrict search to after initial interview
 - ✦ Never ask for log-in credentials
- Use of an applicant's criminal history in making a hiring decision
 - ✦ Ban the box legislation
 - ✦ Title VII considerations



Background Checks



- Notice must include specific information
 - ✦ A statement that an investigative consumer report may be obtained.
 - ✦ A statement that the investigative consumer report is being sought for the permissible purpose of using the information for employment purposes.
 - ✦ A statement that the report may contain information on the employee or applicant's character, general reputation, personal characteristics and mode of living.
 - ✦ The name, address and telephone number of the reporting agency.
 - ✦ The nature and scope of the investigation requested.
 - ✦ Obligations of the agency, such as how the consumer can view the file.
 - ✦ The Internet website address of the investigative consumer reporting agency



New Hire Packet



- I-9 Forms
- Mandatory Arbitration Agreement
- At-Will Employment Acknowledgment
- Consent to Drug Testing



New Hire Packet



- Injury and Illness Prevention Program (IIPP)
- Non-Disclosure/Confidentiality Agreement
- Employee Handbook
- Acknowledgment of Receipt
 - ✦ Obligation to Read and Understand
- Meal and Rest Break Acknowledgment



Employee Handbook



- 1. Equal Employment Opportunity Policy**
- 2. Employment At Will**
3. Hours of Work, Overtime, and Paydays
- 4. Vacation/Paid Time Off**
5. Holidays
6. Sick Leave



Employee Handbook



7. **Leaves of Absence**
8. Termination, Discipline, and Rules of Conduct
9. **Policy against Harassment and Discrimination**
10. Company Property/Confidential Information
11. Technology Use and Security
12. Social Media Policy



Employee Handbook



13. Mobile Device Policy
14. Workplace Violence
15. Inspection of Personnel and Payroll Records
16. Performance Reviews
17. Drug-free Workplace
18. Drug Testing



Paid Sick Leave



- Eligibility
- Upfront v. Accrual Methods
- Use and notice to employer
- Cannot require doctor's note
- Payout



Timekeeping



1. Start and End Times
2. Meal Breaks
3. Overtime
4. Makeup Time



Timekeeping



5. Reporting Time Pay
6. Travel/Commute
7. Split Shifts
8. Alternative Workweek Schedules (4/10 and 9/80)



Leaves of Absence



1. Workers Compensation
2. Pregnancy Disability Leave
3. Disability Leaves of Absence
4. FMLA
5. Paid Family Leave



Discipline & Terminations



- Disciplinary protocol outlined in handbook should be flexible
- Document discipline in personnel file
- NLRA concerted activity
- Termination of employment
 - ✦ Checklist of questions before making the termination decision



Final Paychecks



- Involuntary Termination
- Involuntary Quit
 - ✦ With Notice
 - ✦ Without Notice
- No unlawful deductions



Pay Stubs



Pay stub for an employee paid an hourly wage

The name and address of the legal entity that is the employer

Last 4 digits of the employee's social security number or an employee ID number

All applicable hourly rates

Name of the employee

The inclusive dates of the period for which the employee is paid

Total hours worked

Gross wages earned

All deductions

Net wages earned

SMITH AND COMPANY, INC.		123 West Street Smalltown, CA 98765	
EMPLOYEE	SOCIAL SECURITY NO.	PAY RATE	PAY PERIOD
Johnson, Bob	XXX-XX-6789	18.00 regular 27.00 overtime	2/11/02 to 2/17/02
EARNINGS	HOURS	AMOUNT	DEDUCTIONS
Regular	40.00	720.00	Federal W/H 60.45
Overtime	2.00	54.00	FICA 49.67
			Medicare 12.36
			CA State W/H 10.04
			CA State DI 7.12
			401k 77.40
GROSS EARNINGS:		774.00	
TOTAL DEDUCTED:		217.04	
NET EARNINGS:		556.96	

This pay stub is not applicable to an employee whose compensation is solely based on a salary and who is exempt from payment of overtime under Labor Code section 515(a) or any applicable IWC order.



Protect Yourself



- Binding arbitration/at-will agreement
- Exempt employee confirmation
- Independent contractor confirmation
- Written policies/employee handbook
 - Meal & rest break policies
 - Timesheets
 - Anti-harassment policies
 - Commission & bonus plans
 - Job descriptions
 - Confidentiality and non-disclosure agreements



Protect Yourself



- Maintain proper personnel files
- Maintain proper payroll records
- Equal pay audit
- Email control
- Discipline & termination protocol
- EPLI?
- Have an “HR Manager” and expert counsel on tap



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QUESTIONS?



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