VALLEY LAWYER

DECEMBER 2013 • $4

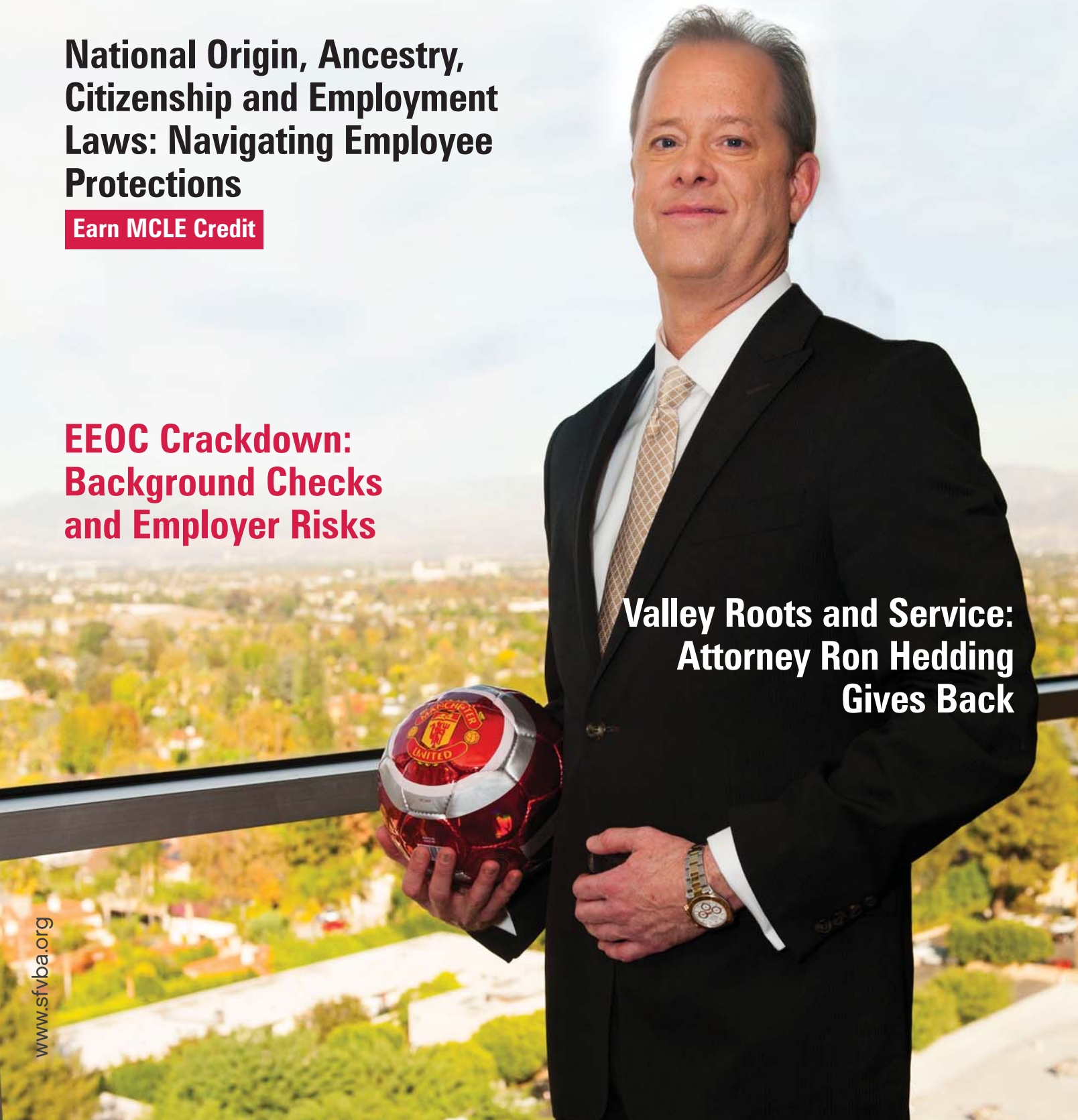
A Publication of the San Fernando Valley Bar Association

National Origin, Ancestry, Citizenship and Employment Laws: Navigating Employee Protections

Earn MCLE Credit

EEOC Crackdown: Background Checks and Employer Risks

Valley Roots and Service: Attorney Ron Hedding Gives Back



www.sfvba.org

Official Sponsors of the San Fernando Valley Bar Association

KRYCLER ERVIN TAUBMAN & WALHEIM

Full Service Accounting Firm

CONTACT MICHAEL J. KRYCLER, CPA, FCA | SCOTT R. ERVIN, CPA

When you need more than just numbers...
you can count on us...

- Litigation Support
- Expert Witness
- Forensic Accountants
- Family Law Matters
- Business Valuations
- Loss of Earnings
- Damages

Krycler Ervin Taubman & Walheim
AN ACCOUNTANCY CORPORATION

15303 Ventura Boulevard, Suite 1040
Sherman Oaks, California 91403

info@ketw.com
t: 818.995.1040
f: 818.995.4124
www.ketw.com

MEMBERS OF
American Institute of Certified Public Accountants
California Society of Certified Public Accountants

BECOME A TRAINED MEDIATOR

with a Certificate in Mediation and Conflict Resolution from California State University, Northridge

Litigated cases increasingly are resolved prior to trial in mediation. Recent studies have shown that lawyers who are trained as mediators get better results for their clients in mediation.

CSUN's Certificate in Mediation and Conflict Resolution provides the graduate level professional training needed for success in this increasingly in-demand field.

- One-of-a-kind, 100-hour, three-course program may be completed in just one semester, with online, Saturday and evening classes, and five midweek court mediation sessions throughout the semester.
- Required practicum offers lawyers opportunities to actively engage with mediation providers and participate in litigated case mediations conducted at Los Angeles Superior Court locations.
- Earn 10 continuing education units (CEUs) upon completion and enhance your advocacy skills and credentials.
- Receive a discounted membership to the Southern California Mediation Association (SCMA), which includes access to conferences, publications and networking opportunities with seasoned SCMA mediators.

Apply now for Spring 2014. Classes start February 15, 2014.

Get started today.

Pat Lyon
Patricia.Lyon@csun.edu
(818) 677–4607

tsengcollege.csun.edu/programs/MCR

California State University Northridge | The Tseng College

Contents

VALLEY LAWYER
Employment Law
A Publication of the San Fernando Valley Bar Association

FEATURES

On the cover: *Ron Hedding. Photo by Robert Reiter.*

COLUMNS

DEPARTMENTS

VALLEY LAWYER

SAN FERNANDO VALLEY BAR ASSOCIATION
5567 Reseda Boulevard, Suite 200
Tarzana, CA 91356
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

EDITOR
Irma Mejia

GRAPHIC DESIGNER
Marina Senderov

Valley Lawyer is published 11 times a year. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Printing Southwest Offset Printing

It's All About Trust

ADAM D.H. GRANT
SFVBA President
agrant@alpertbarr.com

EARLY ON, WE LEARN A very important life lesson: it's all about trust. As babies, unable to fend for ourselves, we trust our parents will do all that they are able to do to feed us and help us thrive. As toddlers, we trust our family will be there to try and understand our raw emotions, even though we are unable to articulate in words what we want. Through childhood and adolescence, we trust an ever expanding group of people to care for us, support our emotional and physical well being and financial needs. Last month, the Bar's Board of Trustees and various section chairs shared experiences that shed new light on how important trust can be and how to develop trust with other people.

We traveled from the concrete confines of the San Fernando Valley to the oak tree topped hills of the Santa Monica Mountains for our annual Board of Trustees' retreat at the Shalom Institute. In the past, these retreats have been interesting, enlightening and productive as we planned the year and reviewed various business items. This year, I wanted to step back from the usual purpose of the retreat and focus on what I felt mattered most for the year to come: building trust and a deeper relationship with all the trustees.

We started the day with a welcome address in which I shared my purpose in bringing everyone to the camp that has been a part of my life for the past 40 years. That day was dedicated to shutting out our fast paced lives, tolerating the bugs, walking through some dirt and learning about each other. I shared with them my story of meeting my wife when I was 12 at camp and how much camp has been a part of our lives together for the past 33 years as a couple.

Randy, our guide for the day, was an interesting man with long white hair, a flowing white beard and a calm soothing voice. As we stood in a meadow, shaded by towering oak trees and softened by a bead of dry leaves, Randy shared with us his philosophy of inclusion and understanding. He questioned us about what trust means and how we think people develop trust. Our trustees freely shared their opinions.

Randy helped break down any initial barriers by having us hold hands and counted us as ones and twos. He then asked all the ones to lean forward and the twos to lean backward so we were forced to work with the "opposing" team to achieve the goal—not falling flat on your face. At this point, I think many in our group realized this exercise had direct implications to our practices. Randy had also asked us to start counting to five when we believed we were balanced. As we started the first exercise, people struggled but worked together, however no one was counting. I began counting to acknowledge everyone's effort and make sure we could conclude the exercise without someone getting hurt. Interestingly enough, when Randy deconstructed the first exercise, he made note that someone took the lead (me) to end the exercise. Upon making that comment, another trustee commented, "I guess we know why Adam is the President." Laughter and nods of heads followed.

Randy was not done with us yet! He prepared the site for our arrival by creating a very large circle with a rope and placing cutout letters of the alphabet somewhat haphazardly within the circle. Using our prior groups, Randy asked each group to step on all the letters of the alphabet, one person stepping on at least one letter and only one person could be in the circle at a time. He then made the most important statement; "Let's time each group's effort to see who can do it the fastest." I thought, "This is interesting. We are learning about trust, yet he just introduced an element of competition." I soon learned why the element of competition was important.

We engaged in the game several times. Each time, the groups' discussion about strategy increased and each time the other group learned something in the process. During the last round of the game, both groups actually chimed in during the other's discussion, offering suggestions on how to accomplish the task even faster.

Our final task proved to be the most challenging. Randy handed out tubes and balls and placed a small bucket about 15 feet away. Each tube was only about 1 foot long. He then explained that we had to work together to have the ball pass through our tubes in succession and end up in the bucket. That ball moved fast! We seemed to get better with practice. Randy pointed out how good we were at encouraging others and virtually eliminating any criticisms.

At the end of the day, we all enjoyed a dinner outside on a deck near the main dining hall. I looked around and noticed that people who did not sit together in the morning were now sitting together and engaging in rather excited banter. I reflected on the day and understood that it is all about trust.

We got out of our comfort zones by coming up to camp, standing in dirt and holding hands. We learned how to work with people by leaning back and forth. We then learned to trust these people even more, over time, and coordinate our efforts. Even when Randy injected competition, we pushed ourselves beyond just cooperating with people on our team, but managed to cooperate with our "competitors." Finally, we learned that once you trust someone, showing how much you trust them by sharing words of acknowledgement is very important. All very good lessons to use in our practice and our lives.

During the ten years I spent at camp as a camper and counselor, we always ended with a circle. We sang songs like "Going on a Jet Plane" and "Circle Game." The director would walk around the circle and share thoughts of summers past. In particular, the director would ask each camper to reflect on the amazing experiences he or she had at camp and on how special everything felt there. The director then suggested that it would be really amazing if we all took just a little bit of camp into our lives and enriched them with similar experiences. So, in the end, I hope each trustee takes a bit of the trust we shared at camp and uses it as we work through this next year and in our practices. I know I will.

Valley Lawyer Cover Auction: A New Holiday Tradition is Born

IRMA MEJIA
Publications & Social Media Manager
editor@sfvba.org

THIS MONTH'S ISSUE IS QUITE SPECIAL. Featured on the cover is the winner of our very first *Valley Lawyer* Cover Auction. The auction was held in October to raise money for the Valley Community Legal Foundation. The auction winner was to be featured in our cover story on public service, coinciding with our season of giving. It turned out to be a very interesting experiment—one we hope to recreate next year.

The *Valley Lawyer* team wasn't quite sure what kind of reaction the auction would elicit or if there would even be any interest in bidding. We were pleasantly surprised —and relieved—as the bids starting coming in. It wasn't a totally smooth operation though. On the very last day of the auction, our office servers went down, preventing many readers from submitting bids. Thanks to social media and our email marketing service, we were able to keep our members informed and extended the auction for one more day. It turned out that many readers were eager to be a part of *Valley Lawyer* while supporting a worthy cause. Ultimately, we raised $3,200 for the Foundation—much more than we ever expected. The winner was kept a secret until the publication of this issue. And we couldn't have asked for a more deserving and compelling story subject.

Thank you to all the members who made the auction a great success. Your lively participation helped raise funds for a great cause. I only wish our cover was large enough to fit you all. We hope to make the auction an annual holiday tradition. We hope you'll be ready to bid again next year.

But you don't need to place a bid to be a part of *Valley Lawyer* throughout the year. Our magazine is an important vehicle for sharing information and promoting the attorneys of the San Fernando Valley. It is a strong publication because of the expertise and creativity of our members.

I encourage you to submit an article for an upcoming issue or a simple announcement for our Member Bulletin. Pitch a story to us. Become active in the Bar's programs or do something amazing in our community. Who knows? We may come knocking on your door one day asking for a cover photo.

Get Published!

SFVBA members are invited to submit articles to *Valley Lawyer* for publication in 2014. *Valley Lawyer* seeks articles covering all areas of law, plus articles focusing on the courts and judiciary, lifestyle, law practice management and technology, as well as humorous commentary about the practice of law. Submit articles, ideas or questions to editor@sfvba.org.

Valley Lawyer 2014 Editorial Calendar

2014 Issue	Content Focus	Editorial Deadline
January	The Courts	December 2
February	Diversity	December 2
March	Business Law	January 3
April	Taxation Law	February 3
May	Criminal Law	March 3
June	Work/Life Balance	April 1
July	Bankruptcy Law	May 1
August	Probate and Estate Planning	June 2
September	Back to School/Education and Family Law	July 1
October	New Lawyers	August 1
November	Attorney Resource Guide	*Special Issue*
December	Public Service/Law Practice Management	October 1

Calendar

Employment Law Section

Mixed Motive Theory and *Harris v. City of Santa Monica*

DECEMBER 4
12:00 NOON
LEWITT HACKMAN
CONFERENCE ROOM
ENCINO

Attorney Linda Hurevitz will discuss the mixed motive theory in light of the Supreme Court decision in *Harris v. City of Santa Monica*. Does the ruling change the McDonnell-Douglas burden shifting order of proof? What is the effect on jury instructions? What is the effect on Motions for Summary Judgment? (1 MCLE Hour)

Probate & Estate Planning Section

Guiding Clients and Their Families Toward Appropriate End of Life Decisions

DECEMBER 10
12:00 NOON
MONTEREY AT ENCINO RESTAURANT

Clinical Bioethicist Viki Kind will discuss how to create a personalized quality-of-life statement for loved ones. Attendees will learn how to support their clients in reaching more meaningful, medically informed and financially appropriate end of life decisions. (1 MCLE Hour)

Business Law Section

Equity Crowdfunding under the JOBS Act: Legal and Business Challenges for Attorneys and Clients

DECEMBER 11
12:00 NOON
SFVBA CONFERENCE ROOM

Jennifer Post will review what business lawyers need to know about crowdfunding and general solicitation offerings based on the regulations recently issued by the Securities and Exchange Commission. (1 MCLE Hour)

Bankruptcy Law Section

Ninth Circuit Decisions

DECEMBER 19
12:00 NOON
SFVBA CONFERENCE ROOM

Attorneys Richard Brownstein and Yi Sun Kim will discuss the significant Ninth Circuit decisions and how the cases impact your practice. (1 MCLE Hour)

TEN THE ESQUIRE NETWORK
DAVID L. FLECK, ESQ., FOUNDER

TARZANA NETWORKING MEETING

Hosted by San Fernando Valley Bar Association and Attorney Referral Service of the SFVBA

Moderated by
STEVEN R. FOX

December 9, 2013
5:00 PM TO 7:00 PM
SFVBA Conference Room

Contact (818) 227-0490, ext. 105 or events@sfvba.org to reserve your seat today.

MCLE

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0490, ext. 105 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

Celebrating the Season of Giving!

ELIZABETH POST
Executive Director
epost@sfvba.org

DECEMBER IS A TIME FOR giving and for celebrating, two traditions embraced by the San Fernando Valley Bar Association and Valley lawyers.

Early December marks the kick off of the SFVBA's annual campaign to solicit funds for *Blanket the Homeless*, the community service program of the San Fernando Valley Bar Association and the Valley Community Legal Foundation. The popular program was conceived in 1995 by Past President Robert Weissman, whose presidency was marked by his slogan "Make a Difference." Bob made a difference by leading the Bar to establish the *Blanket the Homeless* Program to provide free blankets to homeless people and victims of domestic violence in the Valley.

Since the advent of the program in 1995, SFVBA members have donated more than $150,000 to acquire about 40,000 blankets for the Valley's homeless and battered women shelters, including Children of the Night, M.E.N.D., Women's Care Cottage, BRIDGES, Hillview Mental Health, Haven Hills, San Fernando Valley Interfaith Council, San Fernando Valley Mental Health Center and L.A. Family Housing.

This year, on Saturday, December 14, Bar leaders and staff will be on hand in the parking lot of L.A. Family Housing in North Hollywood to distribute in excess of 1,500 blankets to area shelters.

In past years, members who have participated in the event have brought along their children, passing on the spirit of giving to the next generation. I personally have been bringing my 8-year-old daughter Hannah to *Blanket the Homeless* since she was a baby and her involvement has helped her understand the importance of charity and giving back. I call on all members to attend this community event.

In addition to the blanket distribution, the Attorney Referral Service (ARS) will conduct an Ask-A-Lawyer legal clinic to provide legal assistance to the residents of L.A. Family Housing. On December 21, 2013, the ARS we will be looking for volunteers for a second Ask-A-Lawyer program at West Valley Food Pantry.

When you receive your solicitation for *Blanket the Homeless* this month, remember that a blanket warms more than the body; it warms the soul. A $50 donation will buy 11 blankets for the Valley's homeless and domestic violance shelters.

I also invite all members to join colleagues on Tuesday, December 10 at the SFVBA's Annual Holiday Open House for some spirits, treats and lots of good cheer. The celebration will be at our Tarzana offices from 5:30 to 7:30 p.m.

In keeping with our tradition of giving, we ask members to bring to the gathering an unwrapped new toy or giftcard that the Bar will give to the children of Haven Hills and the West Valley Food Pantry.

Have a joyous holiday and Happy New Year!

Managing Mental Disorders in the Workplace

By Robyn M. McKibbin

EMPLOYERS WALK A tightrope when faced with accommodating disabilities in the workplace. Because of their subjective nature, mental disabilities can demand even more finesse. The American Psychiatric Association (APA) recently published the fifth version of its Diagnostic and Statistical Manual of Mental Disorders (DSM-5). It includes several diagnostic categories not included in prior editions, which means more employees may qualify for protection under the Americans with Disabilities Act (ADA) or the Fair Employment and Housing Act (FEHA).

While a disorder may not rise to the level of a disability, discrimination protection laws are very broad and include a wide array of conditions.[1] Moreover, according to the Center for Disease Control and Prevention, about 50 million Americans, or 1 in 5 people, are living with at least one disability. Thus, the APA's expansion of mental disorders could dramatically impact employers and the workforce.

Federal and state laws protect employment opportunities for qualified individuals with disabilities. Under the ADA, a disability is "a physical or mental impairment that substantially limits one or more of the major life activities of the individual."[2] FEHA explicitly differentiates its definition of disability from that of the ADA. Under California law, mental disability includes "having any mental or psychological disorder or condition, such as ... emotional or mental illness ... that limits a major life activity."[3]

Because of FEHA's expansive definition of a protected disability, any mental impairment may qualify as a protected disability. Employers must be prepared to recognize situations that might trigger their reasonable accommodation obligations. This article focusses on employers' obligations under state law and offers practical guidance on how to avoid potential disability discrimination pitfalls.

What is a Mental Disability?

A mental impairment qualifies as a disability if the impairment also "limits" a person's "major life activities."[4] FEHA defines limits as making "the achievement of the major life activity difficult."[5] Major life activities is broadly construed and includes physical, mental, and social activities, such as caring for oneself, performing manual tasks, walking, seeing, speaking, breathing, sleeping, learning, thinking, concentrating, reading, communicating, interacting with others, and working.[6]

Under FEHA, however, "whether a condition limits a major life activity must be determined without respect to any mitigating measures, unless the mitigating measure itself limits major life activities."[7] Thus, an individual who has successfully controlled mental impairment with medication, medical equipment and devices, psychotherapy, or surgical interventions, may nevertheless fall within the definition of disabled under FEHA.

Mental disabilities include emotional or mental illness, intellectual or cognitive disability (formerly referred to as mental retardation), organic brain syndrome, specific learning disabilities, autism spectrum disorders, schizophrenia, and chronic or episodic conditions such as clinical depression, bipolar disorder, post-traumatic stress disorder, and obsessive compulsive disorder.[8] A specific learning disability can include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.[9]

The definition extends to any other mental or psychological disorder or condition that requires special education or related services[10]; having a record or history of such conditions known to the employer[11]; or being regarded or treated by the employer as having or having

had a mental condition or disorder that makes achievement of a major life activity difficult or that although it has no present disabling effect, may become a mental disability.[12]

Unfortunately, there is a dearth of case law analyzing the boundaries of what constitutes a mental disability under FEHA. Depending upon the severity, post-traumatic stress[13] and obsessive-compulsive disorders[14] may constitute mental disabilities. Depression and personality disorders qualify as disabilities.[15]

Specific conditions that do not constitute a mental disability include sexual behavior disorders, compulsive gambling, kleptomania and psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.[16] While sexual behavior identity disorders are not disabilities, California employers must permit transsexual and transvestite employees to dress in a manner consistent with their chosen gender identity, whether or not it is the gender identity of birth.[17]

Noticeably absent from the FEHA's definition of mental disability is language regarding the weight to be given to the duration of a condition in determining whether a person is disabled due to such condition.[18] Temporary conditions may constitute a protectable condition; however, mild conditions that do not limit a major life activity and have little to no residual effects are not disabilities, including common colds or flu, minor cuts, sprains, aches, bruises, non-migraine headaches, and non-chronic gastrointestinal disorders.[19]

Who is a Qualified Individual with a Disability?

FEHA protections only apply to qualified individuals, meaning the law does not cover persons who cannot perform essential job duties, even with reasonable accommodation.

> "This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability... where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations."[20]

The employee bears the burden of proving that he or she is a "qualified individual with a disability."[21] "Essential functions" is defined as the fundamental job duties of the position.[22] It does not include marginal functions.

What is Reasonable Accommodation?

Employers must make reasonable accommodation for the known physical or mental disability of an applicant or employee to enable them to perform a job unless doing so would produce an undue hardship to the employer's business or operations.[23] Employers will not be held liable for disability discrimination or failure to provide a reasonable accommodation for undisclosed disabilities.[24]

> "[I]t is the employee's initial request for an accommodation which triggers the employer's obligation to participate in the interactive process of determining one. If the employee fails to request an accommodation, the employer cannot be held liable for failing to provide one."[25]

A reasonable accommodation includes "[j]ob restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities."[26]

"'Reasonable accommodation does not include excusing a failure to control a controllable disability or giving an employee a 'second chance' to control the disability in the future."[27] Alcoholism and drug addiction are recognized disabilities. However, an employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for

employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the alcoholism or drug use of such employee.[28]

Another limited exception concerns threats of violence, or the fear an employee will act on those threats. In *Wills v. Superior Court of Orange County*,[29] a Superior Court employee with bipolar disorder took numerous medical leaves to treat her condition. She did not inform her employer why she needed the time off. She verbally and in writing threatened several coworkers. At the time, the employee was unaware that these events occurred during the early stages of a severe manic episode. A few days later, the employee's doctor placed her on leave to treat the episode.

When the employee was cleared to return to work, the employer placed her on a paid administrative leave to investigate her coworker complaints. During the investigation, the employee's doctor submitted a letter explaining that she suffered from bipolar disorder which had caused the behavior. After completing the investigation, the employee was terminated. She sued, alleging disability discrimination, among other claims.

The trial court granted the employer's motion for summary judgment and held that the employer had a legitimate, nondiscriminatory basis for the termination: she violated the employer's written policies prohibiting threats and violence in the workplace. The employee appealed.

The court found guidance in cases interpreting the ADA. The court reasoned that, "[i]f employers are not permitted to make the distinction, they are caught on the horns of a dilemma. They may not discriminate against an employee based on a disability but, at the same time, must provide all employees with a safe work environment free from threats and violence." The court went on to uphold the trial court's order granting summary judgment.

Examples of the DSM-5 Changes and Additions

The diagnosis of post-traumatic stress disorder (PTSD) was first established in the DSM-3 in 1980 and has evolved significantly since. The condition causes significant distress or impairment in an individual's social interactions, capacity to work, or another important area of functioning. PTSD symptoms overlap with those of depression, substance abuse and other anxiety disorders.

In DSM-5, PTSD is included in the trauma- and stress-related disorders instead of the anxiety disorder section. PTSD's trigger is exposure to actual or threatened death, serious injury, or sexual violation. Natural, as well as man-made and intentional trauma, can cause PTSD.

DSM-5 focusses more on the behavioral symptoms that accompany the condition and includes four diagnostic criteria instead of three: re-experiencing, avoidance, negative cognitions and mood, and arousal. It also only requires that a disturbance last for more than one month, which could expand the number of employees who are diagnosed with PTSD.

In DMS-4, there was an exclusion for a major depressive episode that applied to depressive symptoms lasting less than two months following the death of a loved one (the bereavement exclusion). This exclusion was removed from DSM-5 for a variety of reasons, including the recognition that bereavement is a severe psychosocial stressor that can precipitate a major depressive episode beginning soon after the loss of a loved one, and commonly lasts one to two years. While most people who experience the loss of a loved one experience bereavement without developing a major depressive episode, employers need to be aware that their bereavement leave policies may not accommodate an employee who needs additional time off.

New obsessive-compulsive disorders in the DSM-5 include hoarding disorder, excoriation (skin picking), substance/medication-induced obsessive-compulsive disorder, body dysmorphic disorder (includes repetitive behavior or mental acts in response to preoccupations with perceived defects or flaws in one's physical appearance), and body-focused repetitive disorder is recurrent behaviors such as nail biting, lip biting and cheek chewing.

In one published opinion, an obsessive-compulsive employee took three times as long as most people to shower, wash her hands, dress and handle or cook food.[30] The court noted several potential accommodations that the employer failed to offer, including modifying an employee's work schedule, allowing an employee a leave of absence for treatment, or allowing the employee to work from home. These accommodations might be appropriate for an employee diagnosed with one of the new obsessive-compulsive disorders.

The DSM-5 also contains several new depressive disorders, including premenstrual dysphoric disorder (PMDD). PMDD is a condition in which a woman has severe depression symptoms, irritability, and tension before menstruation, which are more severe than those seen with premenstrual syndrome (PMS) Whereas the symptoms of PMS may be troubling and unpleasant, PMDD may cause severe, debilitating symptoms that interfere with a woman's ability to function. It is estimated that as high as 13-18% of women of reproductive age may have PMDD symptoms severe enough to induce impairment and distress.[31]

Social phobia has been renamed to social anxiety disorder. It previously was diagnosed when an individual felt extreme discomfort or fear when performing in front of others. That definition is believed to be too narrow. The individual must suffer significant distress or impairment that interferes with his or her ordinary routine in social settings, at work or school, or during other everyday activities.

Workplace Accommodations

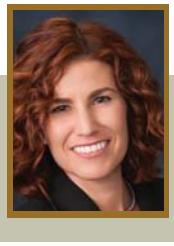
Employers are not obligated to offer the accommodation requested by the employee, tolerate misconduct allegedly caused by an unknown disability, or suffer an undue hardship to accommodate an employee. Employers are not required to potentially offend other employees in order to accommodate an irrational fear. In *Jensen v. Wells Fargo Bank*, a branch manager was held by robbers at gunpoint.[32] Although the robbery was thwarted by authorities, the employee suffered psychiatric symptoms which caused her to become anxious and fearful to a disabling degree when she had to interact with African American customers and coworkers who reminded her of the robbers.[33]

Not all employees with a mental disorder need an accommodation to perform his or her job and some may need only a minor accommodation. Remember that an employer's obligation to provide a reasonable accommodation is only triggered when an employee makes his or her disability known. Employers should not automatically equate poor performance issues with a protected medical condition. Unless a condition is obvious, or an employee discloses medical information, employers should not haphazardly pry into an employee's medical history.

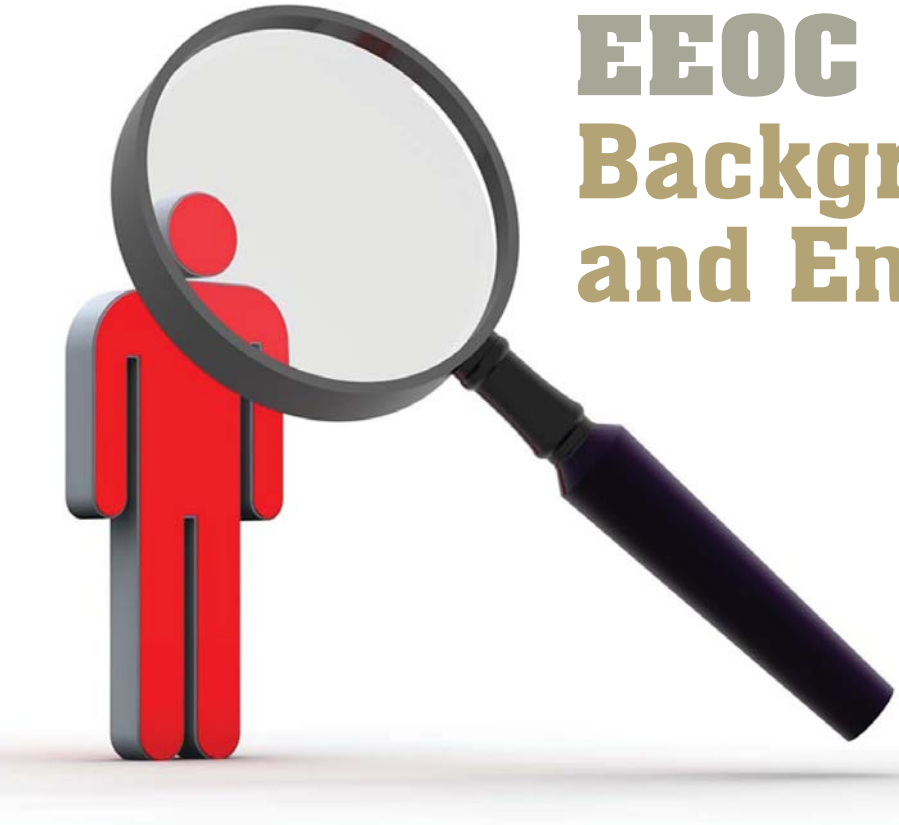
Assuming an employee has established he or she has a mental disability, here are some performance issues and potential accommodations:

- If an employee has difficulty with concentration or memory, move the employee's workspace to a quieter location with less distractions; provide written instructions or daily or weekly task lists; hold weekly or monthly supervisor meetings; reassign marginal job duties to others; or provide additional training.
- If an employee needs time off for treatment, allow the employee to take a leave of absence, reduce work hours or modify his or her schedule; or allow the employee to work from home.
- If an employee has inappropriate interactions with a supervisor or coworker, determine if reassignment is available or desirable; allow the employee to take more breaks to "blow off steam;" provide back-up coverage during the breaks; or allow the employee to listen to soothing music or white noise during work.
- If the employee is chronically late, allow for a flexible start time or work from home; modify the company's attendance policy to ensure that the employee is not automatically in violation of its parameters.

[1] *Pensinger v. Bowsmith, Inc.* (1998) 60 Cal.App.4th 709, 721 [diagnosis under the DSM does not establish conclusively plaintiff suffered from a disability but it is sufficient to raise a triable issue of fact concerning the existence of such a condition].
[2] 42 U.S.C. §12102(2)(A) (emphasis added).
[3] *Govt. Code* §12926(j) (emphasis added).
[4] *Govt. Code* §12926(j)(1).
[5] *Govt. Code* §12926(j)(1)(B) (emphasis added).
[6] *Govt. Code* §12926(j)(1)(C); 2 *Cal.C.Regs*. §7293.6(d)(1).
[7] *Govt. Code* §12926(j)(1)(A).
[8] 2 *Cal.C. Regs.* §7293.6(d)(1).
[9] 2 Cal.C. Regs. §7293.6(d)(3).
[10] *Govt. Code* §12926(j)(2) (emphasis added).
[11] *Govt. Code* §12926(j)(3) (emphasis added).
[12] *Govt. Code* §12926(j)(4), (5) (emphasis added).
[13] *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 256.
[14] *Humphrey v. Memorial Hospital Ass'n.* (9th Cir. 2001) 239 F.3d 1128, 1134-1135.
[15] *Auburn Woods I Homeowners Ass'n. v. FEHC* (2004) 121 Cal.App.4th 1578, 1592-1593; *Diaz v. Federal Express Corp.* (C.D. Cal. 2005) 373 F.Supp.2d 1034, 1047-1053.
[16] *Govt. Code* §12926(j); *2 Cal.C.Regs*. §7293.6(d)(9)(A).
[17] *Govt. Code* §12949.
[18] *Govt. Code* §12926(j).
[19] *2 Cal.C.Regs*. §7293.6(d)(9)(B).
[20] *Govt. Code* §12940(a)(1).
[21] *Green v. State* (2007) 42 Cal.4th 254, 261-262.
[22] *Govt. Code* §12926(f).
[23] *Govt. Code* §12940(m). Employers have an affirmative duty to accommodate disabled applicants and employees. *Sargent v. Litton Systems, Inc.* (N.D. Cal. 1994) 841 F.Supp. 956, 962.
[24] *Bagatti v. Dept. of Rehabilitation* (2002) 97 Cal. App. 4th 344, 354.
[25] *Spitzer v. The Good Guys, Inc.* (2000) 80 Cal. App. 4th 1376, 1384 (citation omitted); *Prilliman v. United Airlines, Inc.* (1997) 53 Cal. App. 4th 935, 954 ["Of course, the employee can't expect the employer to read his mind and know he secretly wanted a particular accommodation and sue the employer for not providing it. Nor is an employer ordinarily liable for failing to accommodate a disability of which it had no knowledge."].
[26] *Govt. Code* §12926(o)(1) and (2).
[27] *Brundage v. Hahn* (1997) 57 Cal.App.4th 225, 239 (citation omitted).
[28] *Den Hartog v. Wasatch Academy* (10th Cir. 1997) 129 F.3d 1076, 1086.
[29] *Wills v. Superior Court of Orange County* (2011) 194 Cal. App.4th 312.
[30] *Humphrey, supra*, 239 F.3d at 1134-1135.
[31] The Premenstrual Syndromes: PMS and PMDD, Informa Healthcare (2007).
[32] *Pensinger v. Bowsmith, Inc.* (1998) 60 Cal.App.4th 709, 721 [diagnosis under the DSM does not establish conclusively plaintiff suffered from a disability but it is sufficient to raise a triable issue of fact concerning the existence of such a condition].
[33] *Id*. at 250.



Robyn M. McKibbin, Partner with Stone, Cha & Dean in Woodland Hills, counsels clients on all aspects of employment law and defends clients when litigation is unavoidable. McKibbin can be reached at rmckibbin@scdlawllp.com.



EEOC Crackdown: Background Checks and Employer Risks

By Kimberly A. Westmoreland

SCREENING JOB APPLICANTS AND EMPLOYEES seeking a promotion is an effective and useful arrow in an employer's quiver. Gone are the days when the only employees who require a background check are those who work with children, cash or sensitive information. Today, all employers have an understandable interest in ensuring the company's services are provided by persons who are trustworthy. For example, issues involving workplace violence lead to allegations of negligent hiring.

Shareholders and investors are acutely aware of the implications of bad acts committed by employees at any level. A lawsuit based upon repeated unlawful missteps by an executive can be expensive for the company and the road to recovery is long. Resume fraud and other false information in the job application process can lead to unnecessary complications down the line. In sum, employers are no longer comfortable with screening employees based only on their gut. Criminal background checks and credit screenings can help alleviate some of this pressure while also demonstrating the company's due diligence.

A background check, also known as an investigative consumer report, typically contains information that is found in public records. Depending on the company's requirements and concerns, a background check of an applicant or employee seeking promotion should include at least an evaluation of criminal records, credit records, education records, military records, state licensing records, sex offender lists, and court records.

Be forewarned—with limited exceptions, employers are not entitled to learn everything about their applicant or employee. Some information, such as certain arrest records and marijuana convictions more than two years old, are off-limits. The background check should not only be carefully tailored to company and industry-wide requirements, but also for the specific job at issue.

Pre-Report Notifications to the Applicant/Employee

California requires that employers provide very specific disclosures to an applicant or employee before obtaining a background check.[1] The disclosures must contain the following information: the fact that a report may be obtained; the permissible purpose of the report; the fact that the disclosure may include information on the applicant/employee's character, general reputation, personal characteristics, and mode of living; the name, address and telephone number of the investigative consumer reporting agency; and the web address (or telephone number if no website is available) where the consumer may find information about the investigative consumer reporting agency's privacy practices, including whether the consumer's personal information will be sent outside the United States or its territories.

Kimberly Westmoreland is a Senior Associate in Kaufman Dolowich & Voluck, LLP's Los Angeles office where she specializes in representing management in wage and hour and class action matters. She can be reached at kwestmoreland@kdvlaw.com.

These disclosures must be in writing and on a document that is separate from the rest of the application paperwork. The only other information that can be included on the disclosure document is the applicant/employee's authorization for the background check and his/her identification information. The disclosures must not include terms or questions concerning race, sex, full date of birth, or the applicant's maiden name, as such questions violate equal employment opportunity laws. In California, an application may ask "job related questions about convictions except those that have been sealed, or expunged, or statutorily eradicated," but cannot ask "general questions regarding an arrest."[2]

Creating the Background Check Criteria

As important as it is to protect the company by ensuring that qualified employees are hired, it is also important that a company protect itself by implementing a background screening process that does not violate anti-discrimination laws. The Equal Employment Opportunity Commission (EEOC) is tasked with investigating and litigating violations of federal workplace anti-discrimination laws, including those involving employment-related background checks.

The Department of Fair Employment and Housing (DFEH) is the California counterpart that reviews discrimination complaints made based on state laws. While both agencies recognize that employers have a legitimate business concern regarding the criminal history of applicants and employees, they are also committed to eliminating discriminatory employment practices based upon unequal treatment and stereotypes. If either agency receives a complaint regarding employment screening policies or practices and an investigation uncovers substantial evidence of discrimination, they will likely pursue a lawsuit against the employer.

The EEOC in particular has been very active in recent months in its pursuit of claims against employers for violations of anti-discrimination laws in the background check process. Therefore, it is important for employers to understand the EEOC's guidelines and suggestions when screening applicants for employment and employees for promotion.

Step One: Targeted Screening

In April 2012, for the first time in twenty years, the EEOC updated its written guidance on the use of employment-related criminal background checks when it published "Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964" (the Update).[3]

In the Update, and in subsequent correspondence clarifying the recommendations contained therein, the EEOC advises employers to implement a two-step process for screening job applicants. First, it encourages employers to screen the applicants' records in a manner that is specifically targeted to only exclude applicants based on factors that are job related and consistent with business necessity. This screening must consider at a minimum the nature of the crime, the time elapsed since the crime was committed, and the nature of the job.[4] Blanket policies or practices that eliminate everyone with a criminal record from employment will not pass the EEOC's standards for "job related" and "consistent with business necessity."

When setting the parameters of this targeted screening, employers should determine whether the applicant will have duties that raise concerns about personal safety and/or financial security. For example, employers should evaluate which of the company's job positions make employees responsible for control or access to other people, require the handling of cash, involve examination of financial or sensitive client information, or otherwise call for a heightened sense of responsibility.

Next, the employer should identify the types of infractions that would make an otherwise qualified applicant ineligible for those particular jobs. For example, a company might not want someone who has recently filed for bankruptcy to have access to its clients' financial information. Once the employer has determined the relevant red flags, then the scope of the targeted screening is defined and can be applied to all applicants for that position. The key to satisfying the EEOC's requirements is a limited, well-defined, targeted approach to the screening.

Step Two: Individual Assessment

If after the initial screening the employer finds that applicants were disqualified for employment, then the next step requires the employer to individually assess each of these flagged applicants. In the individualized assessment, the employer speaks with the applicant, notifies him or her that a factor found on the report makes them ineligible for employment, and allows the applicant the opportunity to explain and provide further information regarding the report. Like the initial screenings, the individual assessment must be tailored to the specific job at issue.

The EEOC provides the following factors that an employer should review when making an individualized inquiry into an applicant with a criminal history:

- The facts or circumstances surrounding the offense or conduct
- The number of offenses for which the individual was convicted
- Older age at the time of conviction, or release from prison
- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct
- The length and consistency of employment history before and after the offense or conduct
- Rehabilitation efforts
- Employment or character references and any other information regarding fitness for the particular position
- Whether the individual is bonded under a federal, state, or local bonding program[5]

The EEOC's intention in adding the extra review of the individualized assessment is to help employers ensure that qualified applicants or employees are not being screened out

based on incorrect, incomplete, or irrelevant information. According to the EEOC, the risk of inaccurate information is high. Therefore, a dialogue between the employer and applicant that allows for explanation and further evaluation is crucial.

The individualized assessment is further intended to help the employer avoid liability if the initial targeted screen is found to be too broad or otherwise not job related and consistent with business necessity. An employer should ensure proper training of its decision makers so the individualized assessments take into consideration the EEOC's suggested factors listed above.

The EEOC has confirmed that a plaintiff may still prevail on a disparate impact claim against an employer that has a compliant initial screening if the plaintiff can show that the employer refused to adopt a less discriminatory individualized-screening "alternative employment practice" that "serves the employer's legitimate goals as effectively as the challenged practice."[6] In other words, if an applicant can prove that a potential employer could have adopted a less discriminatory process and still would have met its goals, then the applicant can prevail on a disparate impact discrimination claim.

Increased Investigation and Prosecution

Employers have come under fire in recent months for criminal background check policies that the EEOC found to be in violation of Title VII of the Civil Rights Act of 1964 and its prohibition of discrimination and retaliation based upon race and national origin in the workplace. For example, the EEOC filed a racial discrimination suit against BMW Manufacturing Co., LLC for allegedly disproportionately disqualifying African Americans in the initial screening with a policy that had criteria that were not job-related and consistent with business necessity.[7]

BMW's policy denied facility access to BMW employees and employees of contractors with certain criminal convictions occurring at any time; however, BMW's contractor only screened for such convictions occurring within the past seven-years. When BMW changed contractors and employees re-applied to work for BMW's new contractor—which applied BMW's broader policy—certain employees were told they no longer met the criteria for working at the facility, their employment was terminated, and they were denied rehire despite the fact that many of them had worked at the BMW facility for many years. The EEOC alleges this blanket policy violated anti-discrimination and disparate impact laws.

The EEOC likewise prosecutes claims when an employer fails to engage in the individual assessment requirement. In a nationwide lawsuit against Dollar General for racial discrimination, nationwide desparate impact lawsuit against the EEOC alleges that the company did not take into account the work history since the criminal conviction and the job duties of an applicant who disclosed a six-year-old conviction for possession of a controlled substance.[8]

The lawsuit further alleges that another applicant advised Dollar General that the conviction records check was inaccurate and she did not have the felony conviction found therein. However, the company did not reverse its employment decision. The EEOC asserts that these policies, and the lack of the "individualized assessment," have a disparate impact against African Americans.

Recommended Best Practices

The updated EEOC Guidelines recommend: employers eliminate any broad policies and practices that automatically exclude individuals with criminal histories; develop narrowly tailored policies; train selected employees on decision-making guidelines appropriate for the company and the position to be filled; limit inquiries about criminal history to job-relatedness and business necessity; and keep any criminal information about an applicant or employee confidential. By following these recommendations, a company can limit their liability exposure and will have well-documented defenses to a potential discrimination claim.

Current Laws in Flux

The EEOC Update has been criticized by members of the legal community, in part based upon questions of whether the EEOC has authority to impose disparate impact liability on employers who consider applicants' criminal backgrounds as part of the hiring process.[9]

The attorneys general from nine states have called for the EEOC to drop the aforementioned lawsuits and rescind the April 2012 Update. While such action by the EEOC is not expected, courts have granted summary judgment to the employers when the EEOC has failed to produce evidence of a statistically significant racial disparity in the employer's use of the conviction criterion to screen out applicants, specifically when the employer can prove it does not have a blanket disqualification policy and therefore there is no disparate impact on a protected class.[10]

Despite the opposition, the EEOC has not been dissuaded from investigating employers' screening practices and filing lawsuits when it believes the background check policy has a disparate impact.

Given the current state of the lawsuits and the courts' rulings, companies are advised to consult an employment attorney well-versed in the DFEH and EEOC requirements regarding background checks to ensure that their policies are in compliance with all relevant requirements.

---

[1] In California, the Investigative Consumer Reporting Agencies Act (Cal. Civil Code §1786.10, et seq.), and the California Consumer Credit Reporting Agency Act (Cal. Civil Code §1785.10, et seq.) govern the use of employmentrelated background checks.

[2] California Department of Fair Employment & Housing Fact Sheet, "Employment Inquiries: What Can Employers Ask Applicants and Employees?" August 2001, www.dfeh.ca.gov/res/docs/publications/DFEH-161.pdf.

[3] EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., April 25, 2010, http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm [hereinafter EEOC Enforcement Guidance].

[4] These factors were identified by the court in *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977) and adopted by the EEOC.

[5] *See* EEOC Enforcement Guidance, *supra.*

[6] EEOC Enforcement Guidance, *supra* endnote 59.

[7] *United States Equal Employment Opportunity Commission v. BMW Manufacturing Co, LLC*, No. 7;:13-cv-01583 (D.S.C. 2013).

[8] *United States Equal Employment Opportunity Commission v. DolGenCorp LLC*, No. 1:13-cv-04307 (N.D. Ill. 2013).

[9] Connor, Terence G. and White, Kevin J. (2013) "The Consideration of Arrest and Conviction Records in Employment Decisions: A Critique of the EEOC Guidance," Seton Hall Law Review: Vol. 43: Iss. 3, Article 3. Available at: http://erepository.law.shu.edu/shlr/vol43/iss3/3.

[10] *Equal Employment Opportunity Commission v. Peoplemark, Inc.*, No. 1:08-cv-907 (HWB), 2011 WL 1707281 (W.D. Mich. 2011).

Bulletin Board

The Bulletin Board is a free forum for members to share trial victories, firm updates, professional and personal accomplishments.

John J. Lynch, longtime SFVBA member and former L.A. County Tax Assessor, died on October 6. He was a spirited politician, skillful tax attorney, entrepreneur and philanthropist. The SFVBA staff remembers him warmly as his visits to the Bar office were always punctuated with jokes and words of encouragement. In his unmistakable New York accent, Lynch often reminded the staff that he was a "graduate from the Brooklyn Charm School." He is survived by his wife of 44 years. We are deeply saddened by his passing and offer our condolences to his family and friends.

SFVBA Secretary **Carol L. Newman** of Alleguez & Newman LLP recently received an AV Preeminent peer review rating in litigation, real estate, and business law from Martindale-Hubbell. Newman can be reached at carol@anlawllp.com.

Longtime SFVBA member, former SFVBA Trustee and *Valley Lawyer* contributor **Phillip Feldman** passed away recently. Feldman was highly regarded among his peers as an expert in legal ethics and professional negligence. His contributions to this publication often focused on ethics and legal theory. He spearheaded the Client Communications Committee, which through the regular column, "Dear Counsel," answered queries from SFVBA members regarding ethics and liability issues. His last column, "History, Public Policy and Plain Talk about California Family Law," was published in the May 2013 issue of *Valley Lawyer*. The *Valley Lawyer* team and our readers will miss learning from his experience, legal insights and observations. We are grateful for his contribution to our understanding of our responsibilities under the law.

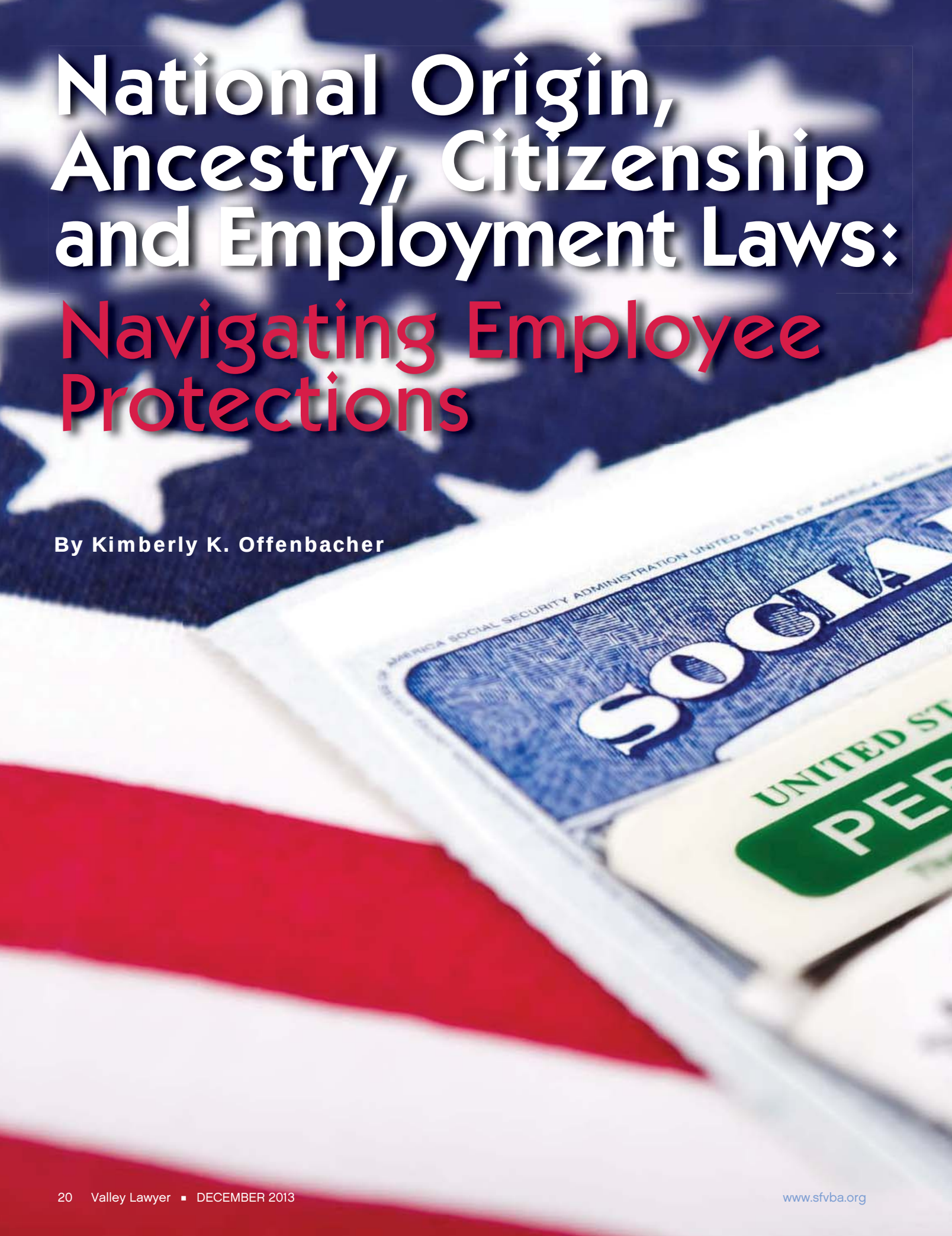
Jan Frankel Schau, former SFVBA Trustee, was recently named a Top 50 Neutral by the *Los Angeles Daily Journal*. Schau can be reached at jfschau@schaumediation.com.

Email your announcement to editor@sfvba.org. Announcements are due on the fifth of every month for inclusion in the upcoming issue. Late submissions will be printed in the subsequent issue. Limit one announcement per firm per month.

National Origin, Ancestry, Citizenship and Employment Laws:

Navigating Employee Protections

By Kimberly K. Offenbacher



By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 28.

MCLE article sponsored by

ATKINSON BAKER
America's Court Reporters

Complex federal and state laws protect employees from discrimination based on national origin, ancestry and citizenship. Employers must carefully navigate through the maze of protections to minimize their risk for discrimination-based employment claims.

WITH IMMIGRATION REFORM AGAIN BEING ushered onto the political stage, amongst deep political divides and an uncertain future, it seems an appropriate time to take stock of some of the current immigration-related protections and corresponding obligations in the employment context. This is especially true given continuing demographic trends in California and the marked rise of national origin discrimination claims filed over the past decade. The California Department of Fair Employment and Housing (DFEH) reported that 19% of all employment discrimination claims filed in 2012 were based on national origin and/or ancestry discrimination. This was up from 5.7% in 2010 and 5.6% in 2008.[1]

National Origin and Ancestry

Title VII of the Civil Rights Act is the comprehensive federal law that prohibits discrimination in employment.[2] The Fair Employment and Housing Act (FEHA) is the California statutory counterpart.[3] The primary objective of both acts is to protect the right to seek, obtain and hold employment without discrimination or abridgement on account of certain enumerated characteristics. Under both acts, it is unlawful for an employer, based on a protected characteristic, to fail to hire, to discharge, or to discriminate in compensation, terms or conditions of employment, or opportunities for advancement.[4]

Although FEHA identifies more categories of protected characteristics than does Title VII, and is generally regarded as being broader in scope, both FEHA and Title VII provide national origin protection.[5] FEHA additionally provides protection based on ancestry.[6] Unfortunately, neither of these characteristics is statutorily defined.

In one often cited case, national origin has been interpreted to mean "the country where a person was born, or, more broadly, the country from which his or her ancestors came."[7] The Equal Employment Opportunity Commission (EEOC), the agency that enforces Title VII, has expanded this definition to include not only a person's, or his or her ancestor's, place of origin, but also a person's physical, cultural or linguistic characteristics associated with a national origin group.[8] Inferentially, from the EEOC definition, national origin protection would reasonably encompass accent, affiliations and appearance.

The EEOC provides additional guidance on identifying national origin or, more specifically, national origin discrimination, by providing closer scrutiny to those claims that involve a person's association with organizations that promote the interests of a national origin group, a person's participation in schools and places of worship affiliated with a national origin group, and a person's name or spouse's name that is associated with a national origin group.[9]

Protection for ancestry, as distinct from national origin, has importance in a couple of contexts. For example, the Ninth Circuit ruled that a member of an Indian tribe might be able to maintain a claim for ancestry discrimination when he was not hired because of his tribal membership.[10] In another case, the Ninth Circuit ruled that a native of Serbia might be afforded protection under Title VII even though Serbia was not a country at the time of the case.[11]

From an employer's perspective, pre-employment inquiries should be limited to determining whether an applicant is qualified for the particular job being sought. Information about a person's national origin or ancestry, or that of their spouse, will typically not be relevant and could later be used as evidence of an employer's intent to discriminate unless justified by some legitimate business purpose.

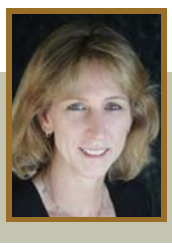
Moreover, there are some legitimate occasions where national origin distinctions are justified in the employment context such as where the distinction serves a bona fide occupational qualification or is required to protect matters of national security.[12] One employment restriction that has received growing attention is an employer's requirement that employees speak only English in the workplace.

According to EEOC regulations, absent a bona fide occupational qualification, an English-only restriction is presumed to be in violation of Title VII.[13] However, in application, courts have repeatedly determined that there are sufficient business necessities served to justify an English-only restriction. In *Garcia v. Spun Steak Co.*,[14] the Ninth Circuit upheld an employer's English-only restriction in the workplace on the grounds that it was necessary to promote racial harmony and worker safety, and did not deny the employees any privilege of employment. The court reasoned that Title VII did not create substantive privileges for the employee or guarantee any right to express cultural identity at work and was not intended to disrupt the prerogatives of management.

Citizenship

The national origin protections afforded by Title VII and the FEHA do not extend to a person's citizenship or immigration status. The United States Supreme Court has specifically held that "national origin" protection under Title VII does not make it illegal to discriminate on the basis of citizenship. An employer may, consistent with Title VII and presumably the FEHA, discriminate in its employment decisions on the basis of citizenship. An applicant may be denied employment for failing to have achieved U.S. citizenship and such denial would not constitute prohibited discrimination as to national origin or ancestry.[15]

Three points are critical to note. First, just because citizenship is not a separate protected characteristic does not mean that people who are not United States citizens may be discriminated against in the employment context



Kimberly K. Offenbacher is a partner at DK Law Group in Thousand Oaks. Her litigation practice over the past 20 years has focused on employment law, business law and professional negligence. Offenbacher can be reached at ko@dk4law.com.

on the basis of other protected characteristics, e.g., gender. All individuals who reside in the United States, citizens and noncitizens alike, are afforded the protections under Title VII.[16]

Second, it is not always easy to distinguish between citizenship discrimination and national origin discrimination. A Mississippi court, for example, entertained a Title VII discrimination claim brought by an American against his Canadian employer when he was terminated in favor of a Canadian. The court held that the claim could properly be stated as one of national origin discrimination rather than citizenship discrimination as originally framed.[17]

Third, certain non-citizens are afforded protection from discrimination under the Immigration Reform and Control Act of 1986 (IRCA). Under this Act, in addition to prohibiting discrimination on the basis of national origin, it is considered an unfair immigration-related employment practice to discriminate against citizens, nationals of the United States or "intending citizens."[18]

In order to claim protection under the IRCA, a noncitizen must be an alien who has been lawfully admitted as a permanent resident, temporary resident or refugee or has been granted asylum so long as that alien seeks naturalization within the requisite timeframes.[19] An alien is defined to include "any person not a citizen or national of the United States."[20]

Importantly, the protections extended to those who are not citizens or nationals are limited. For example, the IRCA expressly permits an employer to "prefer" a citizen over a noncitizen in hiring and recruiting where the two are equally qualified.[21] Discrimination is also permitted where "required to comply with law, regulation, or executive order, or required by federal, state, or local government contract" or as may be determined to be necessary by the Attorney General for that employer to conduct business with governmental bodies.[22]

The IRCA broadly applies to all public and private employers with three or more employees. The IRCA requires employers to affirmatively conduct an initial screening of applicants at the hiring stage. Specifically, the IRCA declares it unlawful to hire for employment "an alien knowing the alien is an unauthorized alien . . . for such employment.[23] Moreover, after hiring, it is unlawful for any person or entity to continue to employ a person who is known to be an unauthorized alien.[24] An "unauthorized alien" is defined to include an alien who is not lawfully admitted for permanent residence in the United States or is not "authorized to be so employed by this chapter [IRCA] or by the Attorney General."[25]

It is also unlawful to hire a person without first undertaking requisite steps to verify that person's identification and eligibility for employment.[26] To satisfy the verification requirements, the person or entity hiring, recruiting or referring an individual for employment must attest under penalty of perjury that he/she/it has verified that the individual is not an unauthorized alien by examining a U.S. passport, a resident alien card, alien registration card or other qualifying document containing a photograph evidencing authorization to be employed in the United States and containing anti-tampering features or other documentation which the Attorney General finds by regulation to be sufficient evidence of authorization to work in the United States.[27]

A person or entity that can establish a good faith compliance with the employment verification process has established an affirmative defense to any claim of having knowingly hired an "unauthorized alien."[28] In addition to other penalties and remedies provided, a person or entity who engages in a pattern of violation may face criminal prosecution and imprisonment for not more than six months.[29]

To avoid potential claims of discrimination, the EEOC has suggested that employment eligibility verification not be conducted until after an offer of employment has been made and that the verification procedure be disclosed during the application process. This suggestion would equally assist an employer in complying with Title VII and FEHA. Should an employer determine that an applicant or employee is or has become an unauthorized alien, an issue may arise as to whether an employer is prevented from hiring or firing that individual under the IRCA or is required to provide the individual with an opportunity to resolve the work authorization problem, while taking an intermediate employment position (such as suspension or leave without pay).[30]

California Labor Laws

In California, employees are entitled to the protections and benefits of the labor laws regardless of citizenship or immigration status. California Labor Code Section 1171.5(a) provides that:

> "(a)ll protections, rights and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals *regardless of immigration status* who have applied for employment, or who are or who have been employed, in this state" (emphasis added).[31]

In enforcing the state's labor and employment laws, immigration status is irrelevant to determining liability and "no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that this inquiry is necessary in order to comply with federal immigration law".[31] However, where damages are concerned, there is a potential conflict between the IRCA and California law.

This conflict was addressed in *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board* (2002) 535 U.S. 137. Unauthorized immigrants, who had submitted false documentation to their employer, were terminated in violation of the National Labor Relations Act (NLRA) for participation in the organization of a union.

The issue before the Court was whether the National Labor Relations Board (NLRB) had authority to award backpay to undocumented workers despite the IRCA's prohibition on hiring those workers in the first place. The Court held that NLRB lacked the authority to do so and reasoned that it would be counter to national immigration policy to compensate an undocumented worker under the

circumstances "for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by criminal fraud."[33]

In *Ulin v. Lovell's Antique Gallery*, a long-term employee brought claims against his former employer for violation of state and federal overtime laws.[34] In dueling motions for summary judgment, the employer argued that, as a matter of law, the employee was precluded from recovering any overtime pay because he had submitted false documentation as to his immigration status at the time of hire. The employee did not present evidence to refute the falsity of the initial documentation presented to his employer. Instead, plaintiff argued that, regardless of whether he was working legally or not, he was entitled to recover all of his earned wages, including overtime wages.

The court agreed, distinguishing between payment for work not performed and therefore not recoverable under *Hoffman* and payment for unpaid wages for past work actually performed. To hold otherwise, the court reasoned, would not be in furtherance of the policies of IRCA as it would create an incentive to employ undocumented workers with the knowledge that undocumented workers would be unable to sue for violation of the minimum wage requirements.

Another case has held that there is no inherent conflict between IRCA and California's prevailing wage laws. Instead, those laws further IRCA's purpose because they discourage employers from hiring unauthorized workers by eliminating any financial benefit in doing so.[35]

Relatedly, the question as to whether undocumented workers who have been discharged in violation of Title VII can potentially recover back pay in addition to other available remedies was left open in *Hoffman*.[36]

California Unfair Immigration-Related Practices

New anti-retaliation legislation has been approved which also bears relevance. On October 11, 2013, Governor Jerry Brown signed Assembly Bill 263, which creates a private cause of action for unfair immigration-related practices. Among other things, AB 263 makes it unlawful for an employer, or any other person, to engage in or direct others to engage in, unfair immigration-related practices with the intent of retaliating against any person for exercising rights protected under the Labor Code or any local ordinances applicable to employees.

This bill leaves no doubt as to the underlying policy it seeks to further. The legislature specifically declares its findings that wage theft and unsafe conditions are serious problems encountered disproportionately by immigrant workers who are often retaliated against for issuing a report or complaint. AB 263 levies substantial penalties against individuals found to have engaged in retaliatory conduct.

An actionable unfair immigration-related practice includes threatening to contact or contacting an immigration authority regarding the immigration status of the worker or threatening to file or filing a false police report against the worker. Additionally, unfair immigration-related practices also include attempts to verify employment authorization

status in a manner that is not specifically required under Section 1324a(b) of Title 8 of the United States Code or for refusing to honor documents offered by the employee or applicant which appear on their face to be genuine.

Any unfair immigration-related practice that is taken within 90 days of the person's exercise of rights afforded under the Labor Code creates a rebuttable presumption of having done so in retaliation for having exercised those rights.

AB 263 authorizes an employee to bring a civil action for equitable relief, damages and penalties, including attorney's fees, expert fees and costs, as redress for the unfair immigration-related practices. A court may also, in its discretion, suspend all business licenses held by the violator at the location where the offending conduct occurred for various periods of time, depending on the number of violations.[37]

Furthermore, on October 5, 2013, Governor Brown approved Senate Bill 666, which provides that it is cause for suspension, disbarment, or other discipline for a member of the State Bar to report or threaten to report the suspected immigration status of a witness or party, or their family, to a federal, state or local agency because that witness or party exercised any right related to his or her employment as that term is broadly defined.

Domestic Worker Bill of Rights

With our aging demographics, the industry of domestic care workers or home healthcare aides is booming. The Bureau of Labor Statistics projects this area to increase by 70% between 2010 and 2020.[38] This industry, disproportionately comprised of woman and immigrants, poses unique issues relative to financial compensation and worker conditions.

In California, the wages, hours and working conditions for household occupations are regulated by Wage Order No. 15-2001. The Wage Order is applicable to all employers, those employing, directly or indirectly, any other person or exercises control over the wages, hours or working conditions of that person. "Household occupations" is broadly defined to include companions, day workers, gardeners, graduate nurses, housekeepers, tutors, cooks and other similar occupations.

As a supplement to Wage Order No. 15-2001, on September 26, 2013, Governor Brown approved Assembly Bill 241, which enacts the Domestic Worker Bill of Rights, through January 1, 2017, to regulate the hours of work of certain domestic work employees and to provide an overtime compensation rate for those workers. In this context, domestic work relates to the care of person in private households or the maintenance of those households or premises and specifically includes "childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids, and other household occupations."[39]

The new legislation attempts to delineate between a more formal domestic work employee (including live-in domestic work employee and personal attendant) and less formal services. For example, close relatives are excluded from AB 241 as are babysitters under the age of 18. A casual babysitter, performing irregular or intermittent services, who is over the age of 18, is also excluded but retains the right to receive

payment of minimum wage for all hours worked under Wage Order 15-2001.

AB 241, as passed, is essentially an overtime law, guaranteeing overtime payment to a domestic work employee who is a personal attendant. Such employee shall not be employed more than nine hours in any workday or more than 45 hours in any workweek unless he or she receives 1½ times the employee's regular rate of pay for all hours worked over nine in a work day and for all hours worked more than 45 in a work week. Stricken from the bill were provisions that would have provided for meal breaks and regulated uninterrupted sleep time and sleeping conditions for live-in employees.

The federal and state laws that protect employees from discrimination on the basis of national origin, ancestry and citizenship are complicated and continue to evolve. For employers of any size, even on the domestic front, it is important to have a basic understanding of these laws implemented through policies and procedures at all stages of employment, and to update these policies and procedures as is required for compliance.

[1] See www.dfeh.ca.gov/statistics.htm.
[2] 42 U.S.C. §§2000e through 2000e-17.
[3] Gov.C. §§12900 et seq.
[4] Gov.C. §12940(a).
[5] Government Code §12921(a) provides protection on the basis of "race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation."
[6] *Ibid.*
[7] *Espinoza v. Farah Mfg. Co., Inc.* (1973) 414 U.S. 86, 88-89.
[8] 29 C.F.R. §1606.1.
[9] *Ibid.*
[10] *Dawavendewa v. Salt River Project Agric*. Improvement and Power Dist. 154 F.3d 1117 (9th Cir. 1998).
[11] *Pejic v. Hugh Helicopters* 840 F.2d 667 (9th Cir. 1988).
[12] 29 C.F.R. §1606.3; See 42 U.S.C. §2000e-2(g).
[13] 29 C.F.R. §1606.7(a).
[14] *Garcia v. Spun Steak Co*. (1993) 998 F.2d 1480.
[15] *Espinoza v. Farah Mfg. Co., Inc.* (1973) 414 U.S. 86, 88-89; *Mahdavi v. Fair Employment Practice Comm'n* (1977) 67 CA3d 326, 341.
[16] 29 CFR s 1606.1(c).
[17] *McMillan v Delta Pride Catfish* 1998 WL 911775 (N.D.Miss 1998).
[18] 8 U.S.C. §1324b(a).
[19] 8 U.S.C. §1324b(a)(3)(B).
[20] 8 U.S.C. §1101(a)(3).
[21] 8 U.S.C. §1324b(a)(4).
[22] 8 U.S.C. §1324b(a)(2)(C).
[23] 8 U.S.C. §1324a(a)(1).
[24] 8 U.S.C. §1324a(a)(2).
[25] 8 U.S.C. §1324a(h)(3).
[26] 8 U.S.C. §1324a(b).
[27] 8 U.S.C. §1324a(b)(1)
[28] 8 U.S.C. §1324a(a)(3).
[29] 8 U.S.C. §1324a(f)(1).
[30] *Incalza v. Fendi North America, Inc.* (2007) 479 F.3d 1005.
[31] See also C.C. 3339(a).
[32] LC 1171.5(b).
[33] *Id.* at 149, 151.
[34] *Ulin v. Lovell's Antique Gallery* 210 WL 3768012 (N.D.Cal.).
[35] *Reyes v. Van Elk, Ltd.*(2007) 148 C.A.4th 604, 616-617.
[36] *Rivera v. NIBCO, Inc.* (9th Cir. 2004) 364 F.3d 1057, 1068.
[37] Up to 14 days for the first violation, up to 30 days for a second violation, and up to 90 days for violations thereafter.
[38] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, 2012-13 Edition, Nursing Aides, Orderlies, and Attendants, on the Internet at http://www.bls.gov/ooh/healthcare/nursing-assistants.htm (visited November 16, 2013).
[39] L.C. 1450(a)(1).

Test No. 62

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. Approximately 19 percent of all employment discrimination charges filed with the DFEH in California in 2012 were based on national origin or ancestry discrimination.
   ❑ True ❑ False

2. Both FEHA and Title VII provide protection to people on the basis of national origin, but only FEHA provides protection on the basis of ancestry.
   ❑ True ❑ False

3. The EEOC's definition of national origin includes a person's physical, cultural or linguistic characteristics that are associated with a national origin group.
   ❑ True ❑ False

4. A member of an American Indian tribe would not be able to state a claim for ancestry discrimination if not hired for employment due to tribal membership.
   ❑ True ❑ False

5. According to the EEOC, an employer's rule that only English be spoken in the work place is presumed to be in violation of Title VII absent a bona fide occupational qualification.
   ❑ True ❑ False

6. An English-only restriction on language in the work place has never been found by any court to support a legitimate business necessity.
   ❑ True ❑ False

7. Both Title VII and FEHA protect against discrimination on the basis of a person's citizenship or immigration status.
   ❑ True ❑ False

8. People who are not U.S. Citizens are not afforded any protections under FEHA, even if discriminated against relative to another protected characteristic such as gender or race.
   ❑ True ❑ False

9. The Immigration Reform and Control Act of 1986 (IRCA) prohibits discrimination against citizens, nationals of the United States, or those intending to become citizens.
   ❑ True ❑ False

10. Under IRCA, a protected non-citizen includes those who have been lawfully admitted as a permanent resident, temporary resident or refugee or granted asylum so long as naturalization is sought within the requisite timeframes.
    ❑ True ❑ False

11. Where two applicants for employment are equally qualified, IRCA does not permit an employer to exercise a preference for the citizen in its hiring decision.
    ❑ True ❑ False

12. IRCA makes it unlawful to knowingly hire for employment, or to retain for employment, an alien unauthorized to work at such employment.
    ❑ True ❑ False

13. An alien, under IRCA, is defined to be any person who is not a citizen or a national of the United States.
    ❑ True ❑ False

14. Under IRCA, it is unlawful to hire, recruit or refer an individual without first verifying that person's identification and eligibility for employment.
    ❑ True ❑ False

15. California employees are afforded the protections and benefits of California labor laws regardless of citizenship or immigration status.
    ❑ True ❑ False

16. When enforcing California labor laws, immigration status of the employee is relevant to determining liability.
    ❑ True ❑ False

17. In *Hoffman*, the Supreme Court held that undocumented workers who had been discriminated against under Title VII were not entitled to recover back pay.
    ❑ True ❑ False

18. Under the newly enacted California Unfair Immigration-Related Practices law, a person's attempt to verify employment authorization status in a manner not specifically required by IRCA is deemed to be an unfair immigration-related practice.
    ❑ True ❑ False

19. Under the California Unfair Immigration-Related Practices law, refusing to accept employment authorization documents that are offered by an employee or applicant that appear on their face to be genuine is deemed to be an unfair immigration-related practice.
    ❑ True ❑ False

20. In addition to remedies otherwise available in a private cause of action, a business found to be in violation of the California Unfair Immigration-Related Practices law may have its business licenses temporarily suspended.
    ❑ True ❑ False

MCLE Answer Sheet No. 62

INSTRUCTIONS:
1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the $15 testing fee for SFVBA members (or $25 for non-SFVBA members) to:

   San Fernando Valley Bar Association
   5567 Reseda Boulevard, Suite 200
   Tarzana, CA 91356

METHOD OF PAYMENT:
❑ Check or money order payable to "SFVBA"
❑ Please charge my credit card for $_____.

_____
Credit Card Number Exp. Date

_____
Authorized Signature

5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0490, ext. 105.

Name_____
Law Firm/Organization_____
_____
Address_____
City_____
State/Zip_____
Email_____
Phone_____
State Bar No._____

ANSWERS:
Mark your answers by checking the appropriate box.
Each question only has one answer.

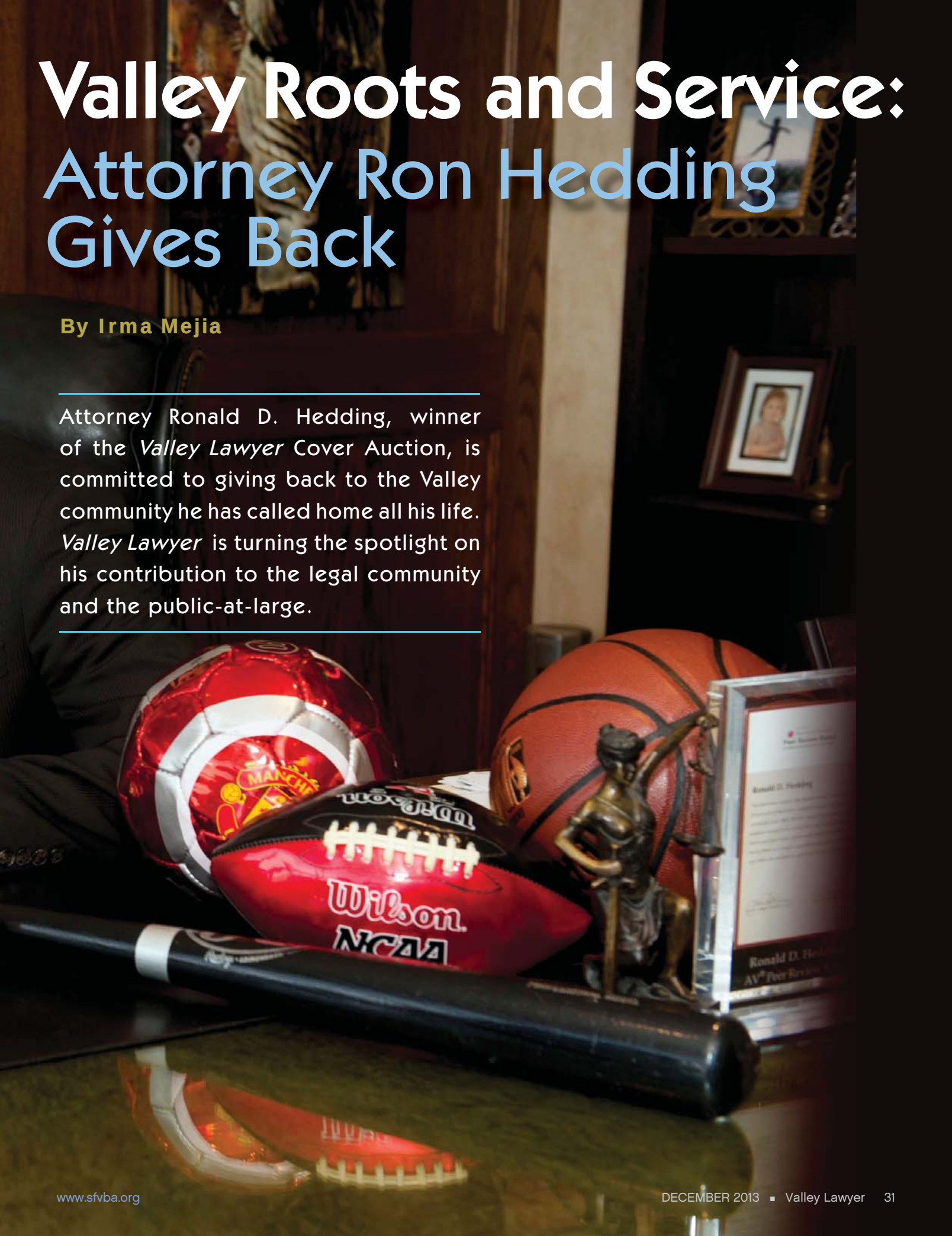
1.	❑ True	❑ False
2.	❑ True	❑ False
3.	❑ True	❑ False
4.	❑ True	❑ False
5.	❑ True	❑ False
6.	❑ True	❑ False
7.	❑ True	❑ False
8.	❑ True	❑ False
9.	❑ True	❑ False
10.	❑ True	❑ False
11.	❑ True	❑ False
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False

Photo by Robert Reiter

Valley Roots and Service: Attorney Ron Hedding Gives Back

By Irma Mejia

Attorney Ronald D. Hedding, winner of the *Valley Lawyer* Cover Auction, is committed to giving back to the Valley community he has called home all his life. *Valley Lawyer* is turning the spotlight on his contribution to the legal community and the public-at-large.



WITH THE SEASON OF GIVING UNDERWAY, *Valley Lawyer* reflects on the commitment of SFVBA members to public service. Many Valley attorneys donate countless hours to pro bono representation, volunteer settlement programs, arbitration programs, and local charities. It's a natural human desire to want to give to others and one which pays dividends. Recent research shows that people who volunteer generally live longer and have greater life satisfaction and self esteem.[1] Giving back makes people feel good while improving the world around them.

This month, *Valley Lawyer* highlights the community contributions of longtime SFVBA member and winner of the *Valley Lawyer* Cover Auction Ronald D. Hedding. In October, *Valley Lawyer* auctioned this issue's cover story to benefit the Valley Community Legal Foundation. Many admirable individuals and firms submitted bids but Hedding's, submitted just in the nick of time, came out on top.

Ron Hedding after being sworn in as a member of the State Bar of California by Judge David M. Schacter in 1994.

With deep Valley roots and a successful criminal law practice in Encino, Ron Hedding's public service has a strong local impact. Over his 19-year career, Hedding has served on many critical programs, including the State Bar's Judicial Nomination Evaluation (JNE) Commission and LACBA's Indigent Criminal Defense Appointments (ICDA) Panel. However, one of his most impressive acts of community service is his commitment to fostering positive youth development as a sports coach.

Over the past 10 years, Hedding has coached 38 youth sports teams. "Giving back to the community brings its own rewards. People genuinely appreciate and respect a person that is acting in a manner that does not serve their own interests," he explains. "It is not always easy to find the time and energy to do something for others but it is certainly a great feeling when you see how much they appreciate you and your efforts."

When asked why coaching local youth sports teams was so important, Hedding highlights the strong values taught through competitive sports that enrich a child's development. "It has been my experience that sports teach competitiveness, team spirit, responsibility and provide opportunities to make lifelong friendships," he says. "Team sports are a great way to bring a community together, meet new people and teach our youth sportsmanship and fair play."

His coaching activities allow him to closely interact with his own children while enriching the lives of many others on school teams and in recreational leagues. "Coaching youth sports has provided some of the most memorable and fun experiences of my life," says Hedding. "It has allowed me to interact with each of my four children in a way that cannot be matched. My parents were both very active in my sports growing up and it has been such a pleasure for me to pass on the tradition."

Hedding himself was a local athlete. He grew up in the San Fernando Valley and played competitive sports while at Cleveland High School and briefly at California State University Northridge. His favorite sports to coach are baseball, which he played as a young man, and soccer, which is played by all his children.

"Over the years I have been fortunate to coach some unbelievable teams," says Hedding. "My best memories are when the players take over in the heat of battle and start to work together to win. For any coach, this is a proud moment–you know that you have developed in them a competitive spirit that transcends any additional coaching you could provide."

Hedding's own competitive and motivated spirit shines through in his own practice. After college, Hedding decided to follow in his father's footsteps by becoming a lawyer. He earned his law degree from University of La Verne, Encino campus and was sworn into the California State Bar in 1994. His chosen area of practice was a natural one. "Criminal law has always been a passion of mine. Interacting with all the players in the criminal justice system has been both interesting and rewarding. I always enjoy the challenge of asserting my client's rights and interests," says Hedding.

It's a challenge which Hedding is perfectly fit to meet. Over his 19 years of experience in criminal law, he has achieved a lasting reputation among his peers as an exceptional legal advocate. He has received an A.V. Preeminent peer review rating by Martindale-Hubbell and was recognized in 2005 as a "Rising Star" by Super Lawyers. This year he was named among the Top 100 Criminal Defense Lawyers by the American Society of Legal Advocates.

Hedding earned his reputation and accolades through diligent hard work and zealous advocacy on behalf of his clients. Many of his cases at both the state and federal level have made headlines and garnered nationwide media coverage. One such case involved a pardon granted by President George W. Bush in 2004 to one of his clients, a San Fernando Valley resident. The client's original conviction was for a minor crime in 1969. Hedding's work in demonstrating his client's productive and trouble-free life since the initial conviction led to issuance of one of only a few pardons issued during President Bush's two terms in office.

Of his career in criminal law, Hedding reflects, "What I find most rewarding is when I have an opportunity to assist someone who has gone off course in getting their life back. I am a true believer that there is good in everyone and that mistakes in judgment can be overcome."

According to Hedding, the true reward is not in the headlines and spotlight but rather in the end result for his clients. "There is a sense of pride in winning a big case but when it comes right down to it, the real reward comes from looking someone in the eyes and seeing that they are genuinely thankful they have the opportunity to do the right thing and get back on the correct path."

Hedding views his service on the ICDA Panel as an educational and rewarding experience. While on the panel, he provided his legal services to criminal defendants who otherwise would not have been able to afford adequate legal

legal representation. "[That experience] has given me an appreciation for our system and the people that make it run," he explains. "The cases to which I was appointed were not of my own choosing and sometimes the client and I did not see eye to eye. But I provided my best work and ultimately it was a valuable and rewarding learning experience."

While not every case may turn out as smoothly as one would want, Hedding's faith in the American justice system never wavers. "Even though our system is not perfect, I strongly believe it is the best in the world," he says. "I have found that criminal law is much more civil than the practice of civil law. It has been my experience that when someone's freedom is on the line, there is no gamesmanship or deceptive actions by the attorneys."

His biggest gripe about practicing law is a common complaint among many attorneys: the business aspect of running a practice. "The practice of law would be so much more rewarding if I did not have to worry about covering my payroll and various other responsibilities," he says.

Like most other Valley attorneys, he has accepted the day-to-day details of running a business as an unavoidable aspect of life. In spite of his complaints, his business acumen can't be denied. The Hedding Law Firm has handled thousands of cases over its 19 years in business and remains a strong criminal law practice in the Valley.

Hedding's successful legal career has allowed him to give back to the community in greater ways. His recent donation to the Valley Community Legal Foundation is a testament to his success as a lawyer and his commitment to the local community. "The Foundation is an important organization to foster good will in the legal community. Through its scholarship and grants program, the Foundation has established itself as a positive beacon in the community at large," he says.

When discussing public service among lawyers, Hedding's conviction is quite firm. "I strongly believe that if attorneys can give back to the community, they should make every effort to do so," he explains. "It is not easy to take time out of our busy schedules but if more attorneys took the time to do simple acts that help someone in legal need, I believe it would go a long way towards enhancing our profession and assist in countering any negative views of attorneys held by the general public."

Hedding's commitment to public service is exemplary. He is just one of many SFVBA members who give back to their communities. Busy schedules may make volunteering, pro bono work or charity difficult, but individuals who manage to serve the community in one way or another leave the greatest impact on our world.

[1] Sylvia Ann Hewlett. "Good Works Can Lengthen Your Life Expectancy," *Harvard Business Review Blog Network*, (February 12, 2009), http://blogs.hbr.org/2009/02/good-works-can-lengthen-your-l.

Irma Mejia is Editor of *Valley Lawyer* and serves as Publications and Social Media Manager at the San Fernando Valley Bar Association. She also administers the Bar's Mandatory Fee Arbitration Program. She can be reached at editor@sfvba.org.

Credit Card Surcharges

By David Gurnick

WHEN IT COMES TO PAYING BY CASH OR credit card, can a business offer a discount for paying by cash? Can they charge extra for using a credit card? Recently a federal judge in New York issued an injunction against that state's enforcement of a law that prohibits advertising a surcharge for payment by credit card. The court said:

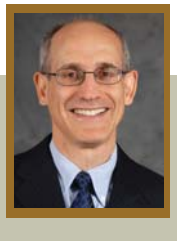
> Alice in Wonderland has nothing on Section 518 of the New York General Business Law. . . If a vendor is willing to sell a product for $100 cash but charges $102 when the purchaser pays with a credit card, the vendor risks prosecution if it tells the purchaser that the vendor is adding a 2% surcharge because the credit card companies charge the vendor a 2% "swipe fee." But if, instead, the vendor tells the purchaser that its regular price for the product is $102, but that it is willing to give the purchase a $2 discount if the purchaser pays cash, compliance with section 518 is achieved. . . . [T]his virtually incomprehensible distinction between what a vendor can and cannot tell its customers offends the First Amendment and renders section 518 unconstitutional. *Expressions Hair Design et a. v. Eric Schneiderman, Attorney General of NY* I13 Civ. 3775 (JSR) (Oct. 3, 2013).

The New York statute prohibits a seller from imposing a charge to a customer who pays by credit card. But it does not prohibit sellers from offering an equivalent discount to customers who use cash. The New York court recognized that "surcharges and discounts are merely different labels for the same thing—a price difference between cash and credit."

Starting in the 1980s, credit card companies began to lobby states to enact no-surcharge laws. Ten states enacted such laws. California's no-surcharge law is at Cal. Civ. Code Sec. 1748.1(a). Other states with such laws are Colorado, Connecticut, Florida, Kansas, Maine (but Maine's law was repealed in 2011), Massachusetts, New York, Oklahoma and Texas. The credit card issuers also started to include contractual no-surcharge provisions in their agreements with retailers, but in January 2013 they agreed to drop these contractual restrictions as part of an antitrust settlement. As a result, the state laws took on new importance.

The New York court's opinion is well written and its logic should apply equally to the California no-surcharge statute. The court's decision can be accessed on the internet at www.nysd.uscourts.gov/cases/show.php?db=special&id=343.

Business Law POV is a new column in Valley Lawyer offering brief insights and observations of all aspects of business law. SFVBA members interested in writing a Business Law POV column are invited to contact editor@sfvba.org. Ideas for other columns are also welcome.



David Gurnick is an attorney at the Lewitt Hackman firm in Encino, practicing in the areas of franchise law, trademarks, copyrights and other intellectual property. Gurnick is a State Bar of California Certified Specialist in Franchise and Distribution Law. He can be reached at dgurnick@lewitthackman.com.

NARVER

Providing SFVBA members With an exclusive Lawyers Professional Liability

ALL LAW FIRMS

COMPETITIVE PRICING

ALL AVAILABLE LIMITS OF LIABILITY

OPTIONAL DEFENSE COSTS IN ADDITION TO THE LIMITS OF LIABILITY

DEFENDANTS REIMBURSEMENT COVERAGE

PERSONAL INJURY COVERAGE

FREE TAIL FOR RETIREMENT, DEATH, OR DISABILITY

COVERAGE ENHANCEMENT DESIGNED SPECIFICALLY FOR SFVBA MEMBERS

Narver Insurance is committed to providing the SFVBA members with diverse, niche specialty insurance products, offered through an exclusive Lawyers Professional Liability Insurance program.

Narver products are provided through insurance companies with an A.M. Best "A" rating. Narver products and services deliver long-term profitability utilizing 100 years of unique liability insurance experience to the table.

Each of our advisors below has decades of experience in insurance broking.

Call us today for a second opinion consultation or a quote at (626) 943-2200 or visit our website at www.narver.com.

Narver Insurance is a supporter of the San Fernando Valley Bar Association.

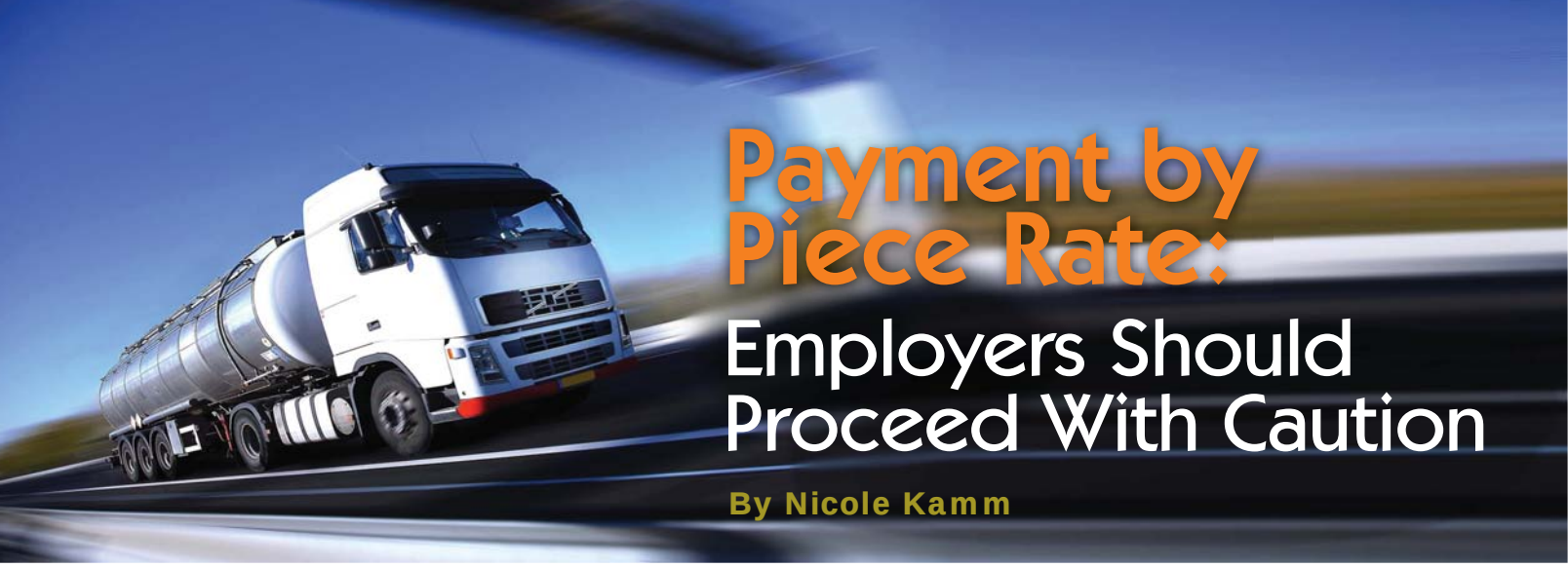
Wesley Hampton
whampton@narver.com

Diane Wood
dwood@narver.com

Debra Mondragon
dmondragon@narver.com

Michelle Mitchikoff
mmitchikoff@narver.com

Crystal Veiga
cveiga@narver.com



Payment by Piece Rate: Employers Should Proceed With Caution

By Nicole Kamm

THE PIECE RATE COMPENSATION SYSTEM has been commonly used in the auto technician, manufacturing, agricultural, truck driving, and other industries for years. Piece rate compensation means employees are paid a set amount based on the tasks performed, rather than hours worked. For example, a furniture assembly worker may be paid $5.50 for each table assembled; a piece rate delivery driver may be paid 15 cents for each mile driven; or an auto technician may be paid $15 for each oil change.

Piece rate compensation plans are intended to incentivize employees to be more productive—the more tasks completed, the more money earned. These types of compensation plans had generally been accepted, provided employees earned at least minimum wage for each hour worked. However, in 2013, two California appellate court decisions created new requirements for employers using piece rate compensation systems and called such plans, regardless of whether they guaranteed compensation of at least minimum wage for each hour worked, into question.

Gonzalez v. Downtown LA Motors LP

In March 2013, the California Court of Appeal held that California's minimum wage law requires employers who compensate employees on a piece rate basis to also pay those employees a separate hourly wage for all other time worked, including work performed before, after and between piece rate tasks.

In *Gonzalez v. Downtown LA Motors LP*[1], the employer was an automobile dealership that sold and serviced Mercedes-Benz automobiles. The dealership paid its automotive service technicians a flat rate ranging from $17 to $32, depending on the technician's experience, for every "flag hour" worked. "Flag hours" were assigned to every task the technician performed on an automobile and was intended to correspond to the actual amount of time the technician would need to perform the task. For example, if a tire rotation was assigned two flag hours, a technician would be paid two times the flat rate for all tire rotations performed during the week. The technician who completes the repair task accrues the number of flag hours assigned to the task, regardless of how long the technician actually took to complete it.

Technicians accrued flag hours only when working on a repair task and regularly did not have repair work to do because there were not enough vehicles to service. When this occurred, technicians had to remain at work, and those who asked to leave were told to stay in case customers came in. While waiting for repair work, technicians were expected to perform various non-repair tasks, including obtaining parts, cleaning their work stations, attending meetings, traveling to other locations to pick up and return cars, reviewing service bulletins, and participating in online training.

To ensure technicians earned at least minimum wage, the dealership tracked all work time. If a technician's total compensation was less than minimum wage times the total number of hours worked, the dealership would supplement the technician's pay to meet the minimum wage requirement. Thus, the dealership argued its compensation plan was lawful because it ensured technicians always earned at least minimum wage for every hour worked.

The court found, however, that despite this assurance, the dealership's piece rate compensation plan violated California's minimum wage requirement because it did not pay employees for "all hours worked."

Relying on *Armenta v. Osmose, Inc.*[2], a non-piece rate decision holding an employer may not "average" unpaid hours worked and hours worked at an hourly rate greater than minimum wage to meet the California minimum wage obligation, the court distinguished California's minimum wage requirement from federal law, and found the averaging method accepted under federal law could not be applied under California law.

Nicole Kamm is an employment defense attorney at Lewitt Hackman in Encino. Kamm represents employers facing employee claims for wages, wrongful termination, leaves of absence and other employment claims. She also regularly counsels employers to minimize the risk of such claims. She can be reached at nkamm@lewitthackman.com.

Under California law, "every employer shall pay to each employee...not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

The court in *Downtown LA Motors* noted "hours worked" is defined as "the time during which an employee is subject to the control of the employer." Therefore, because the dealership required technicians to remain on-site and perform other tasks between vehicle repairs, technicians must be paid a separate hourly rate for that time. Payment for such time was not accounted for in the dealership's compensation plan, thus the court found it was unlawful.

The misstep in this case, however, is that in a piece rate system, the question is not "averaging" of hourly rates. Rather, it is whether the minimum wage obligation is met by an employer paying the greater of the piece rate versus actual hours worked at minimum wage.

By definition, a piece rate is not an hourly rate. Further, the California Labor Commissioner has historically followed federal law, under which the compensation system used by the dealership in this case appeared to be lawful. In fact, the California Division of Labor Standards Enforcement (DLSE) Manual recognizes that a piece rate system like the one used here is permissible. Nevertheless, the *Downtown LA Motors* court held employers may not "average" the piece rate compensation to satisfy the California minimum wage obligation.

In sum, the court held California law requires an employer that compensates an employee on a piece rate basis to also pay that employee a separate hourly minimum wage for time spent performing non-piece rate work.

Bluford v. Safeway

While the *Downtown LA Motors* court did not expressly consider any obligation with respect to compensation requirements for paid rest breaks, another California Court of Appeal did shortly after. In *Bluford v. Safeway*[3], the court held "a piece rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law."

Safeway employed a team of truck drivers to complete deliveries. It compensated the drivers primarily based on miles driven and the performance of specific tasks, a common form of piece rate compensation. Specifically, a driver's pay was calculated based on mileage rates applied according to the number of miles driven, the time of day the trips were taken, and the locations where the trips began and ended; fixed rates for certain tasks (e.g., pallets delivered and picked up); an hourly rate for a predetermined amount of minutes for certain other tasks (e.g., 10 minutes at a fixed hourly rate for set-up time at each delivery location); and an hourly rate for delays (e.g., breakdowns, time spent at scales, and other delays beyond the drivers' control).

Drivers were also given regular and timely breaks. Drivers alleged, however, this compensation system failed to provide them paid rest breaks as required by law because they were not paid a separate hourly wage for such breaks.

Safeway noted its policies specifically provided for paid rest breaks and the piece rates for driving miles included compensation for paid break time. Safeway further argued California law did not require employers who use piece rate or incentive-based compensation systems to put employees on the clock just to pay separately for rest periods.

The court disagreed; holding piece-rate compensation could not be "averaged" over non-piece rate idle (or rest break) time. On this basis, the *Bluford* court concluded drivers' rest breaks could not be considered "paid" in violation of California law. In particular, the court held Safeway's compensation system did not specifically account for rest periods or provide an ability to be paid for them. The court stated, "a piece rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law." The court based its ruling in part on a broad reading of the Industrial Welfare Commission (IWC) Wage Orders, which generally state "authorized rest periods shall be counted as hours worked for which there shall be no deduction from wages." Safeway's compensation plan, by contrast, did not provide any means by which an employee could verify rest periods were in fact paid.

In essence, the court found Safeway's system relied on minimum wage averaging, which earlier courts had ruled impermissible. *Bluford* was the first court to expressly require employers to separately pay piece rate employees for rest breaks.

The employers in *Downtown LA Motors* and *Bluford* filed petitions for review with the California Supreme Court. Despite strong support from employer groups across the state, the Supreme Court recently denied the petitions.

Impact on Employers

The *Downtown LA Motors* and *Bluford* decisions highlight the risks for any California employer using a piece rate or similar incentive-based pay structure.

Employers who pay employees on a piece rate basis and want to limit their potential exposure will have to modify their compensation plans to merge piece rate compensation systems with one that also pays hourly wages. Piece rate employees should now receive an additional hourly rate (at least minimum wage) for all time the employee spends performing non-piece rate tasks. Employers should also separately compensate piece rate workers for rest breaks and show such payment on the employees' pay stubs.

Some employers may consider eliminating piece rate compensation plans altogether and providing a base hourly rate in addition to a bonus to reward employees for productiveness. As long as the base rate is at least minimum wage, employers can argue this leaves no doubt whether each and every work hour, including rest breaks, are compensated.[4]

---

[1] 215 Cal.App.4th 36 (2013).
[2] 135 Cal.App.4th 314 (2005).
[3] 216 Cal.App.4th 846 (2013).
[4] In this scenario, employers must factor any incentive-based bonus into the "regular rate of pay" for purposes of calculating overtime.

New Members

The following joined the San Fernando Valley Bar Association in October 2013 and have been approved as members by the SFVBA Board of Trustees.

Eileen Becker
Oldman, Cooley, Sallus, Birnberg & Coleman
Encino
(818) 986-8080
ebecker@oclslaw.com
Paralegal

Jenny J. Chen CPA
Hutchinson and Bloodgood LLP
Glendale
(818) 254-7663
JChen@hbllp.com
Certified Public Accountant

Alan Fassonaki
Woodland Hills
(818) 518-8994
fassonaki@gmail.com
Law Student

Richard D. Freiman
Freiman Law
Santa Monica
(818) 378-3530
richard@freimanlaw.com
Labor and Employment

Richard Mark Garber
Law Offices of Richard Mark Garber
Valley Village
(818) 762-8120
rickgarber@sbcglobal.net
Bankruptcy

Rebecca Johnson
Oldman, Cooley, Sallus, Birnberg & Coleman
Encino
(818) 986-8080
rjohnson@oclslaw.com
Paralegal

Maricela Alvarez Lambe
Fusco & Clarke
Burbank
(818) 557-7338
mmala@sbcglobal.net
Family Law

Armando G. Lope
Norwalk
(661) 236-4812
lope.armando@gmail.com
Criminal

Suzy Marjanian
Reseda
(818) 377-7694
suziemarjanian@hotmail.com
Law Student

Daisy M. Perez
Reseda
daisyuwla@gmail.com
Law Student

Griselda Perez
Sylmar
(818) 447-3712
griselda.perez@lls.edu
Law Student

Christopher D. Quinlan
Certified Information Management
Anaheim
(714) 394-1675
chris@certifiedusa.net
Associate Member

Daniel Samadi
Beverly Hills
(310) 962-5655
dansam333@gmail.com
Law Student

Sesilya L. Saraydarian
Canoga Park
(818) 648-8167
sesilya.ls@gmail.com
Law Student

Daniel C. Schwartz
Rick L. Schwartz, A Professional Corp.
Calabasas
(818) 880-9401 502
dan@rickschwartzapc.com
Taxation

Kevin F. Silver
Los Angeles
kevin.f.silver@gmail.com
Law Student

Ryan C. Stanley
Woodland Hills
818-422-6296
Ryancstanley@me.com
Mergers and Acquisitions

Francesca B. Sutton
Encino
franciciejws@gmail.com
Law Student

Scott C. Timpe
Mirman, Bubman & Nahmias, LLP
Woodland Hills
(818) 451-4600 112
stimpe@mbnlawyers.com
Bankruptcy

Kimberly A. Westmoreland
Kaufman Dolowich & Voluck, LLP
Los Angeles
(310) 775-6528
kwestmoreland@kdvlaw.com
Labor and Employment

Alexander Joshua Zeesman
Encino
(818) 990-8899
ZeesmanLaw@gmail.com
General Practice

INSURANCE PROGRAM FOR SFVBA MEMBERS

Heffernan Professional Practice Insurance Brokers Law Firm Program
A DIVISION OF HEFFERNAN INSURANCE BROKERS

Heffernan's Professional Practices Insurance Brokers (PPIB) team, serving **law firms** for over 25 years, offers one-on-one client service and insurance programs to SFVBA Members. Heffernan offers the experience and industry clout needed to secure the most comprehensive and cost effective insurance programs available.

Business Insurance

General Liability, Automobile, Property, Workers' Compensation, Umbrella, Management Liability and International Coverage

Employee Benefits

Group Medical, Dental, Vision, Life, LTD, EAP

Financial Services • Personal Insurance HR Consulting • Claims Consulting

Angela McCormick
Vice President
Commercial Insurance
714.361.7718
AngeliaM@heffins.com

Cecille M. Feliciano
Managing Vice President
Employee Benefits
213.785.6919
cecillef@heffins.com

Haven't met us yet? Why not? Our Accolades

- VIP Broker for the *Association of Legal Administrators* (ALA) Insurance Program
- Named a *Best Places to Work* in Orange County in 2012
- Ranked 38th Largest Broker of US Business by *Business Insurance Magazine* in 2013
- Ranked 16th Largest Independent Agency by *Insurance Journal* magazine in 2011
- Named a Top Corporate Philanthropist by the *San Francisco Business Times* since 2013

The Association does not endorse, sponsor or approve any insurer or outside insurance program.

Contact

Heffernan Insurance Brokers
6 Hutton Centre Drive
Suite 500
Santa Ana, CA 92707
714.361.7700
800.234.6787
Fax: 714.361.7701
www.heffins.com
License #0564249

Office Locations

Walnut Creek,
San Francisco,
Petaluma, Palo Alto,
Los Angeles and
Santa Ana, CA;
Portland, OR;
St. Louis, MO and
New York, NY

PRESIDENT'S CIRCLE

- SFVBA membership for every firm attorney and paralegal
- Prominent listing in *Valley Lawyer* and firm logo on President's Circle page of SFVBA website
- Recognition and 5% discount on tables at Bar-wide events, including Judges' Night
- Invitations to President's Circle exclusive events with bench officers, community leaders and large firms

WE RECOGNIZE THE FOLLOWING PRESIDENT'S CIRCLE MEMBERS FOR THEIR DEMONSTRATED COMMITMENT AND LEADERSHIP IN SUPPORTING THE LEGAL PROFESSION AND ITS WORK IN THE COMMUNITY.

Alpert Barr & Grant APLC
Christie Parker & Hale LLP
Law Offices of Goldfarb Sturman & Averbach
Kantor & Kantor LLP
Kestenbaum Eisner & Gorin LLP
Law Offices of Marcia L. Kraft
Pearson Simon & Warshaw LLP
Greenberg & Bass LLP
Oldman Cooley Sallus Gold Birnberg & Coleman LLP
Stone Cha & Dean LLP
Wasserman Comden Casselman & Esensten LLP
Lewitt Hackman Shapiro Marshall & Harlan ALC
Neighborhood Legal Services of Los Angeles County
Nemecek & Cole
Parker Milliken Clark O'Hara & Samuelian APC
University of West Los Angeles School of Law

Contact SFVBA Executive Director Liz Post at (818) 227-0490, ext. 101 or epost@sfvba.org to sign up your firm today!

Happy Holidays from the SCVBA!

AMY M. COHEN
SCVBA President
amy@cohenlawplc.com

DID YOU KNOW...
…this past Thanksgiving marked a once in a lifetime occurrence? Wednesday night, November 27, was the first night of Hanukkah, with Thanksgiving falling on the second night of Hanukkah, marking the first time this has happened (since the establishment of Thanksgiving by President Lincoln in 1863) and the only time it will happen for another 70,000 years!

… in remembrance of the sacred oil of the Temple in Jerusalem, fried foods such as latkes (potato pancakes) and jelly doughnuts are popular during Hanukkah.

… the guttural sound of the Hebrew letters cannot be duplicated by the English alphabet, resulting in many spellings of the word Hanukkah (or Chanukkah) in English and all are correct.

… Christmas was not declared an official holiday in the United States until 1870. And Oklahoma was the last state to declare it a legal holiday in 1907.

… President Teddy Roosevelt, an environmentalist, banned Christmas trees from the White House in 1912.

… Each year more than 3 billion Christmas cards are sent in the United States alone.

…Christmas trees have been sold in the United States since 1850.

… It is estimated that the song "White Christmas" by Irving Berlin is the best-selling single of all time, with over 100 million sales worldwide.

However you are celebrating this holiday season, the Santa Clarita Valley Bar Association wishes its members and friends a very happy holiday season and a happy new year! Thank you for your continued support. We look forward to another great year!

Re-cap of Fall Events

On September 12, 2013, the Santa Clarita Valley Bar Association welcomed attorney and author Charles Rosenberg to the Tournament Players Club (TPC) Valencia for our Second Annual Dinner with the Author Event. Mr. Rosenberg entertained guests during dinner with stories about his career as an attorney and his jump to writing legal thrillers, answered questions and signed autographs. Keep an eye on our 2014 calendar for another great author to be featured at our next Dinner with the Author event.

On October 10, 2013, Brian Koegle of Poole and Shaffery presented his annual Employment Law Update to members and guests. Always a well-attended event, Brian provided updates on laws relevant to both an employment law practice and also for members' clients who have employment related issues.

On November 21, 2013, the 2013-2014 Board of Trustees was installed at the Annual Awards and Installation Dinner at TPC Valencia. The 2013-2014 officers and members-at-large installed were Amy Cohen as President; April Oliver as President-Elect; Claudia McDowell as Treasurer; David Rickett as Secretary; and Jeff Armendariz, Ben Scott and Cody Patterson as Members-at-Large. Also continuing to serve on the Board as Immediate Past President is Dan Gunning. The Association would like to thank all members who ran for a position and congratulate the newly elected and installed Board of Trustees.

The Association would also like to thank outgoing board members for all of their time and hard work on behalf of the Association: Barry Edzant, who served as the 2011-2012 President and continued on the Board as Immediate Past President this year, and Sam Price, who has served as Treasurer for the past three years.

Valley Community Legal Foundation Celebrates Second Annual Veterans Day Golf Tournament

VCLF honored Valley veterans on November 11, 2013 at the Porter Valley Country Club in Northridge. Veterans were invited to enjoy a day of golf as attendees raised money to support law-related programs in the San Fernando Valley.

GREG RYNERSON BAIL BONDS

Photos courtesy of Greg Rynerson Bail Bonds, Inc., a professional bail bond company serving the entire state of California.

Giving Thanks and Looking to the Year Ahead

ETAN Z. LORANT
VCLF President
esq8ton@gmail.com

THE BOARD OF DIRECTORS of the Valley Community Legal Foundation (VCLF) and I would like to thank Ronald D. Hedding and the Hedding Law Firm for placing the winning bid in the *Valley Lawyer* Cover Auction, thereby supporting the Valley Community Legal Foundation, the charitable arm of the SFVBA. I would also like to thank the other firms and individuals who participated in the auction. Your efforts are greatly appreciated. Lastly, I would like to acknowledge and thank the *Valley Lawyer* editorial staff for conceiving this fundraising idea to benefit the residents of the San Fernando Valley.

As the year winds to an end, we reflect on our recent work and look forward to the future. This past Veterans Day, the VCLF held its Second Annual Veterans Day Golf Tournament and Dinner. The Golf Tournament took place at the picturesque Porter Valley Country Club and was attended by lawyers, judges, law enforcement personnel, and individuals from the public-at-large.

Our sponsors made it possible for over 35 veterans and active duty members of the United States Armed Forces to enjoy a day of golf and be thanked for their service to this country. Proceeds from this fundraiser will be used to set up a free monthly veterans legal clinic in the San Fernando Valley to assist homeless veterans dealing with various legal issues affecting their daily lives.

Remaining true to its mission of supporting law-related programs that assist children, families and domestic violence victims and enhance community access to the courts, the VCLF has joined forces with Southwestern Law School to establish the "Valley Community Legal Foundation and Wendy and Elaine Friedenthal Family Law Public Interest Grant." The grant will fund a law student's summer clerkship atNeighborhood Legal Services of Los Angeles County, where he or she will assist with a variety of family law cases. This grant is partly funded by the generous donation received this year from the Attorney Referral Service of the SFVBA.

Always looking ahead, the VCLF Board has convened a Strategic Planning Committee to chart its course over the next decade, preparing a five- and ten-year plan for the Foundation. We are also planning our next exciting Law Day Gala to take place at CBS Studio Center on May 31, 2014. This worthy fundraiser is a lot of fun so be sure to save the date!

We look forward to your continued support as we tackle many important projects in the coming year.

Classifieds

ATTORNEY-TO-ATTORNEY REFERRALS

APPEALS AND TRIALS

$150/hour. I'm an experienced trial/appellate attorney, Law Review. I'll handle your appeals, trials or assist with litigation. Alan Goldberg (818) 421-5328.

STATE BAR CERTIFIED WORKERS COMP SPECIALIST

Over 30 years experience-quality practice. 20% Referral fee paid to attorneys per State Bar rules. Goodchild & Duffy, PLC. (818) 380-1600.

SPACE AVAILABLE

ENCINO

Individual office and mini suite available. Includes reception room, shared kitchenette, 3 common area conference rooms, paid utilities, janitorial, security building with 24/7 access. Call George or Patti (818) 788-3651.

SHERMAN OAKS

Executive suite for lawyers. One window office (14 x 9) and one interior office (11.5 x 8) available. Nearby secretarial bay available for window office. Rent includes receptionist, plus use of kitchen and conference rooms. Call Eric or Tom at (818) 784-8700.

SUPPORT SERVICES

PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING

Family Visitation Services • 20 years experience "offering a family friendly approach to" high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • visitsbyIlene@yahoo.com • (818) 968-8586/(800) 526-5179.

OFFICE LOANS

Purchasing or refinancing your office? Building or office condo—Up to 80% LTV. Portfolio Lender—Rates as low as 3.95%. **ACI Capital**—(818) 654-5212.

SFVBA 17th Annual MCLE Marathon

January 17 and 18, 2014

Braemar Country Club
4001 Reseda Boulevard, Tarzana

Supported by

The Matloff Company

ATKINSON BAKER
America's Court Reporters
The SFVBA's Official Court Reporter Sponsor

ARXIS FINANCIAL, INC

TEN The Esquire Network

NARVER INSURANCE

LAW OFFICES OF ALICE A. SALVO

MCLE Key Drive

Only $99 for MCLE Marathon Registrants!
Contains 15 Popular *Valley Lawyer* MCLE Articles

Earn the Maximum 12.5 Hours of Self-Study Credits
(Including All Specialty Credits)

San Fernando Valley Bar Association Members Earn Up to 12.5 Hours of MCLE for Only $169!

Friday January 17

9:30 a.m.
Nuts and Bolts of Estate Planning
Alice A. Salvo
Law Offices of Alice A. Salvo
1 Hour MCLE

10:30 a.m.
Financial Disclosures
Chris Hamilton, CPA, CFE, CVA
Arxis Financial, Inc.
1 Hour MCLE

11:30 a.m.
Is That Considered Malpractice?
Wes Hampton, Narver Insurance
Michael Narvid
1 Hour MCLE (Legal Ethics)

12:30 p.m.
Lunch

1:30 p.m.
Prevention of Substance Abuse
Ron Hoffman
1 Hour MCLE
(Prevention of Substance Abuse)

2:30 p.m.
Build Your Practice, Ethically
Martin Rudoy, The Esquire Network
Lynne Bassis
1 Hour MCLE (Legal Ethics)

3:30 p.m.
Elimination of Bias and Diversity in the Legal Practice
Myer Sankary and
Professor Christine Goodman
1.5 Hours MCLE
(1 Hour Elimination of Bias, 0.5 General)

Saturday January 18

9:00 a.m.
2014 Developments in Employment Law
Sue Bendavid and Nicole Kamm
1 Hour MCLE

10:00 a.m.
Top Ten Insurance Mistakes: How Best to Advise Your Clients
Elliot Matloff
Matloff Insurance
1 Hour MCLE

11:00 a.m.
Conduct Smarter Legal Research
Fastcase
1 Hour MCLE

12:00 noon
Lunch

1:00 p.m.
Escaping Bar Discipline
Professor Robert Barrett
2 Hours MCLE (Legal Ethics)

3:00 p.m.
Latest Developments in Marriage Equality
John Stephens and Carol Newman
1 Hour MCLE

Registration Form and Membership Application

(Pre-Registration deadline is January 10, 2014.)

Name _____

Firm _____

Address _____

City _____

State, Zip Code _____

Phone _____

Fax _____

E-Mail _____

State Bar No. _____

Bar Admission Date _____

MCLE MARATHON REGISTRATION FEES

	Member	Non-member
2-Day Seminar	$169	$399
or		
Friday, January 17	$99	$219
Saturday, January 18	$99	$219
or		
Per MCLE Hour	$35	$60
✔ Class Attending		
Late Registration Fee	$40	$60
MCLE Self-Study Key Drive (with Marathon Registration)	$99	$99
MCLE Self-Study Key Drive Only	$139	$229

Membership Dues: $ _____

Total Enclosed/To be Charged: $ _____

If paying by credit card:

Credit Card # _____ - _____ - _____ - _____

Expiration Date _____ / _____ / _____

Signature _____

"Attorneys who wish to remove their name from lists the State Bar provides to qualified outside entities may do so by logging on to Member Login on the home page of the State Bar's website. After registering with My State Bar Profile, go to "Change my address, phone numbers, and opt-out preference," and change your Opt-out preferences. Members may also e-mail their opt-out request to memrec@calbar.ca.gov, or by calling the Member Services Center, 1-888-800-3400. Members who choose to opt out will not receive mailings about State Bar-sponsored member benefits such as attorney insurance program offerings, MCLE provider programs and a variety of professional discounts."

Conduct a Jury Focus Group

Holding a Jury Focus Group before trial can give you the advantage by affording you the opportunity to test your case in front of a panel of mock jurors. Holding a focus group in the early stages of your case can expose potential problems as well as help point your case in the right direction.

We take all of the hassles out of the process as well. Our facility provides dedicated focus group rooms with closed circuit viewing and video recording for viewing later.

We provide the Jurors, A/V Equipment, food and beverages, all for a price that is surprisingly affordable.

Call today for details and Client discounts

Personal
COURT REPORTERS, INC.

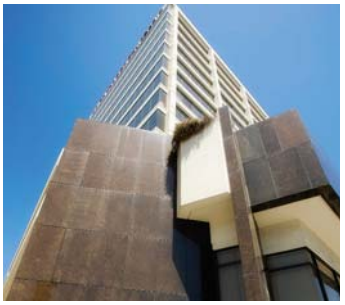
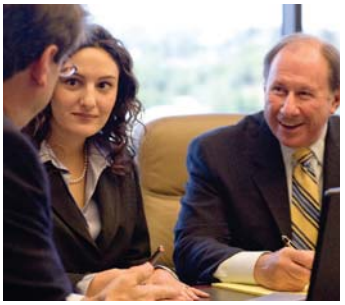
800-43-DEPOS

www.personalcourtreporters.com

Personal is my "go to" source for all of my Jury Focus Groups and Court Reporting needs. They surpass all my expectations.

~Michael Alder

The Power You Need The Personal Attention You Deserve

Lewitt Hackman is a full-service business, real estate and civil litigation law firm. As one of the premier law firms in the San Fernando Valley, we are a powerful and forceful advocate for multinational corporations, privately held and family businesses, start-up companies, and individuals. At the same time, we are personal enough to offer individual and detailed attention to each and every client, no matter what their size.

Protecting Your Business.
Protecting Your Life.

LH LEWITT HACKMAN

LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN
A LAW CORPORATION

16633 Ventura Boulevard, 11th Floor ■ Encino, California 91436-1865
(818) 990-2120 ■ Fax: (818) 981-4764 ■ www.lewitthackman.com

BUSINESS PRACTICE AREAS
(Transactions & Litigation)

- Corporations/Partnerships/LLCs
- Commercial Finance
- Employment
- Environment
- Equipment Leasing
- Franchising
- Health Care
- Intellectual Property, Licensing & Technology
- Land Use/Development
- Mergers/Acquisitions
- Real Estate Finance/Leasing/Sales/ Acquisitions
- Tax Planning

CONSUMER PRACTICE AREAS

- Family Law
- Personal Injury/Products Liability
- Tax and Estate Planning
- Probate Litigation/Will Contests