

**MY EMPLOYEE WENT TO THE
LABOR COMMISSIONER...NOW
WHAT?**

By Dania M. Baker (Alvarenga), Esq..

You fired that difficult employee after he had a blow up with a client. You think you finally got rid of him for good, now out of nowhere, you get a notice from the Labor Commissioner that he's suing you for thousands. What can you do?

Do I have to Respond?

You cannot bury your head in the sand and ignore any notice from the Labor Commissioner. Even if you think you have a winning case, you have all your time cards in order and you have a lot of witnesses, ignoring notices will only lead to a problem. You **must** respond.

What Can I be Sued for and How Far Back Can They Go?

The Labor Commissioner covers mainly wage and hour disputes: minimum wage, overtime, lunches and rest breaks and penalties related to those disputes. They also investigate retaliation claims and ultimately file lawsuits on behalf of employees in cases of egregious behavior by the employer.

The Labor Commissioner goes back 3 years for verbal agreements and 4 years for written agreements.

What is the Process?

When an employee has a grievance, he/she will go to the Labor Commissioner's local office and fill out some paperwork. They will give the investigator any information that is relevant, their hours, title, duties, how often they took breaks and all details regarding their employment.

The investigator will gather this evidence and will analyze the claim. You will then get a notice in the mail which tells you there was a claim filed, tells you the name of the employee, dates of employment and amounts allegedly owed.

The first step will be to call you to a "conference." This conference is rather informal and it is simply an attempt to try to settle the case between you and the employee. You will be gathered in a small room where you will answer basic questions and hear what the employee has to say about the claim. The officer will then separate you and go back and forth trying to reach a settlement.

If you settle then the claim is done. If you do not settle then a few weeks later you will get a formal notice of complaint in the mail. The complaint will set the issues, dates worked and amounts claimed. It will also indicate a date for a formal hearing.

The hearing, although in an informal setting, is a formal hearing. The hearing officer will have the employee testify then ask you questions. If you have attorneys present you can also ask each other questions (cross-examine). You should bring paperwork and any witnesses you have. The hearing officer will take the matter into consideration and

mail you a decision several weeks or months later.

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What If I Don't Agree With the Results?

After you receive notice in the mail you have 30 days to appeal. The downside of this is that if you appeal and lose you have to pay the other side's attorneys fees.

** The information provide in this article is for informational purposes only and is not intended to serve as legal advice. If you have an inquiry related to Labor Commissioner or on any legal matter, it is advised that you seek the assistance of an attorney.*