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February 2013 Newsletter

StephenDanz & ASSOCIATES

Dear Melanie,

Greetings from Stephen Danz & Associates! It was a pleasure meeting many of you at the Winter CAAA Convention this past weekend in San Diego. We are looking forward to working with you in the new year.

This month's email newsletter includes tips for identifying potential civil litigation claims for applicants' attorneys, an article providing valuable insight on the statute of limitations in employment law cases and information regarding our referral program. It is our sincere belief that expanding your referral network leads to the start of an even more productive, successful, and fulfilling year for you and your clients.

Sincerely,

Melanie Porter
Stephen Danz

Identifying Employment Law Claims for Your Clients

Often in practice one of the most difficult tasks in referring your client to an attorney, is knowing the correct questions to ask your client to determine the issues and the type of attorney needed. Below we have compiled a list for Workers' Compensation attorneys to help identify potential civil litigation claims:

1. Did the employee lose his or her job as a result of the industrial injury? Are you considering filing a 132(a) claim?

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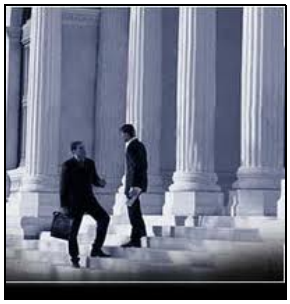

Our referral program can be your own profit center! We pay generous referral fees (25% gross net) in accordance with the State Bar Rules and reciprocal referrals where appropriate. We also provide regular updates on your referred cases.

Please contact Stephen Danz to discuss your potential referrals at (877) 789-9707 or stephen.danz@employmentattorneyca.com.

Client Testimonial

"I was able to buy a franchise and start my own business thanks to your hard work and six figure settlement in my discrimination and wrongful termination case. Your hard work on my behalf, always being available to answer my questions about "what's next," were most reassuring. I have recommended you to several potential clients and will

2. Was the injury such that a job could have been done by the employee with some type of reasonable accommodation, such as restricted lifting or bending, job restructuring, offering part-time or modified work, reassignment to a vacant position, modifying or buying equipment or devices, adjusting or modifying examinations or policies, providing readers or interpreters?

3. Did the employer have a discussion with the employee relating to accommodations or other jobs available, for which the employee was qualified?

4. Did the employer allow a hostile environment to permeate the workplace or "chill" the rights of workers to file WCAB claims? (i.e., "We suspend employees pending investigation following reports of any injuries.")

5. Was the employee paid all of his or her wages due on the last day of his or her employment, including accrued vacation, sick leave and all overtime wages?

6. Does the employer honor one 30-minute meal break (for every 5 hours unless total work period is 6 hours) and two 10-minute rest periods per day per 8-hour shift? [If no, how many other employees have been denied meal and/or rest periods? Class action possibilities here.]

7. Was the industrial injury the result of an unsafe working condition? [Violations of Labor Code Sections 6310-6311 and possible 1102.5 claim for retaliation.]

8. Has the employee complained about unsafe working conditions? [Internal reports are considered reports to a governmental agency Labor Code Section 6311/possible Labor Code Section 1102.5 claim for retaliation.]

9. Has the employee asked for leave which has been denied, i.e., California Family Rights Act ("CFRA") leave (federal FMLA leave) of 12 weeks (continuous or intermittent)? Industrially injured employee is entitled to both if condition qualifies under CFRA.

10. Would a short-term extension of otherwise approved leave have allowed the employee to return to his or her job? If not offered, ask why.

A "yes" answer to any one question can lead to a positive referral experience for all. The subjective factors that tend to tip the scales in favor of representation are the length of time employed, the readiness and desire of the injured worker to return to gainful employment and a solvent defendant employer. There is no hard and fast rule here, but we would certainly consider your view points on these issues before accepting a case.

Administrative Claims Prior to Court Filings

Most of our California employee-clients believe that the critical job of an attorney in employment discrimination, emotional distress or wrongful termination law suits is to file the law suit before the expiration of the statute of limitations. This refers to the time period in which a claim for damages must be filed with the California Superior Court. The available time depends on the particular cause of action. Primarily, the standard time period for personal injury is 2 years, and is codified at Code of Civil Procedure Section 335. In some cases, there may be a shorter period (slander

continue to do so. Thank you, Danz & Associates!"

- Jeannie M.

About Our Firm

StephenDanz & ASSOCIATES

With over 30 years of trial and settlement experience, Stephen Danz & Associates is California's largest employee only, statewide law firm with offices in in Los Angeles (Mid-Wilshire, Brentwood, Pasadena), Orange County, San Diego, Fresno, San Bernardino, Oakland, San Francisco, Santa Rosa and Sacramento. Our firm is dedicated to representing employees in disputes against their employers. Our attorneys represent employees in class actions, wrongful termination cases, discrimination (age, sex, race, national origin, and physical or medical condition) and harassment cases, wage disputes, overtime pay cases, and rest and meal period cases.

Our experienced lawyers have represented thousands of employees throughout the State of California and have won numerous trials and arbitrations on their behalf. If you think you have a possible claim please contact our office immediately. We don't make empty promises - we deliver results. We provide free initial consultations. No Attorneys' fees unless we make a recovery on your behalf.

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claims), or a long period such as 3 years for violation of the California Labor Code.

However, most of our clients are surprised when we tell them that there are actually two separate time limits that must be complied with. In all cases in which a violation of the California Government Code is alleged (age, race, sex, physical or mental disability discrimination), a claim must be filed with the Department of Fair Employment and Housing within 1-year of the last act of like-kind discrimination. A claim to the EEOC must be filed within 300 days. "Like kind" can be tricky. Consider the following situation: January, 2011 a female is victimized by a failure to promote based on a glass ceiling policy. However, she continues to remain employed until April, 2012, and she then files her claim. Sure, it was within a year of termination, but more than a year after the glass-ceiling problem. Whether that claim will be timely ("relate back") will depend on whether she alleges that her termination was based on the same type of discrimination. If she is fired for whistle blowing unrelated to the glass ceiling, her claim may well be barred. The continuing violation doctrine will protect "like kind" acts of discrimination, however and that is the subject of an entirely separate blog.

The need to exhaust the administrative agency's investigatory function before filing in court extends to more than just discrimination and more than employment. For example, in some cases a claim must be filed under the Federal Torts Claims Act. Any filing must be absolutely in compliance with the statute and rules of the agency. In one recent case, a veteran's widow filed a defective claim with the VA since she was not legally acting as the "personal representative" of his estate (Mader vs. United States). Thus, legal guidance is critical to file the right claim form with the correct agency and include critical allegations such as capacity to bring the claim. (State and local governmental agencies also require that a claim form be filed in most personal injury and even breach of contract cases. The general time period for public claims is six months; however, this can be extended on a showing of good cause in most jurisdictions, including California).

Unionized employees generally can file in the Superior Court without first exhausting their administrative remedies with their union by filing a grievance, as long as the collective bargaining agreement or memorandum of understanding does not require its interpretation to adjudicate statutory rights such as wage and hour laws. There may also be a downside to going to the union since a loss at the grievance stage may not be appealable to the Superior Court or other court. Expert legal advise should be sought as to whether this type of administrative claim should be filed. Many union agreements require an almost-immediate filing so legal help or a call to the union should be made immediately after a major adverse employment event.

In some cases, such as with the California Labor Board, only a few causes of action require the filing of a claim. One such instance is the Private Attorney General's Act, or PAGA, Labor Code 2699. This allows suit to be brought on behalf of a representative group of employees without the necessity of filing and certifying a class action lawsuit. Currently the courts are split on whether a claim form must be filed prior to seeking relief for violations of Labor Code 1102.5. This incredible code provides that the burden of proof shifts to an employer to prove by clear and convincing evidence that an employee was not terminated for complaining about being required to engage in illegal activities.

Some of the shorter times in which to file a claim may be

present when an employee seeks to file a claim with the Workman's Compensation Appeals Board for a work-related injury. We routinely refer our industrially-injured clients to local work comp counsel. In many cases, we represent the same industrially-injured worker in wrongful termination matters related to failure to accommodate their industrial injury.

This column should be considered educational in nature only and not legal advise. Legal advise can only be given by an attorney licensed in your jurisdiction and familiar with the facts of your case.

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