

The California Merchant



February, 2008

Vol. 20, No 2

Great rates for 2008!

As you probably know, your association, California Merchants Safety Association (C.M.S.A.), is no longer working with the State Compensation Insurance Fund. We have partnered with Heffernan Insurance Brokers to bring our members a new workers' compensation insurance program with **AMAZING** rates.

Check out the 2008 base rates comparison below and make sure to get a quote for your company A.S.A.P!!!

| Workers' Comp Class Code | New Heffernan 2008 base rate* | Compare | SCIF 2008 base rate | Class Code Description |
|--------------------------|-------------------------------|------------|---------------------|--|
| 8017 | \$4.52 | <u>vs.</u> | \$6.52 | Stores- Retail- N.O.C. |
| 8018 | \$7.61 | <u>vs.</u> | \$10.98 | Stores- Wholesale- N.O.C. |
| 8387 | \$5.44 | <u>vs.</u> | \$7.86 | Auto Service Stations |
| 8389 | \$5.92 | <u>vs.</u> | \$8.54 | Auto Repair Shops |
| 8392 | \$9.21 | <u>vs.</u> | \$13.30 | Auto or Truck Storage Garages |
| 8061 | \$5.69 | <u>vs.</u> | \$8.21 | Store, Groceries |
| 8391 | \$4.24 | <u>vs.</u> | \$6.12 | Auto Truck Dealers- employees |
| 8324 | \$6.08 | <u>vs.</u> | \$8.77 | Auto Gas Stations |
| 9516 | \$5.25 | <u>vs.</u> | \$7.58 | Television, Video, Audio Equip. - service/repair |
| 9519 | \$8.03 | <u>vs.</u> | \$11.59 | Household Appliance- service/repair |
| 7198 | \$11.28 | <u>vs.</u> | \$16.28 | Parcel Delivery Companies |
| 7232 | \$10.86 | <u>vs.</u> | \$15.67 | Mail Delivery Service Companies |

* All 2008 rates are the filed base rates and do not include any individually earned merits or credits. Actual rates may be lower.

Our new workers' compensation program through Heffernan Insurance Brokers offers a substantial savings over the State Fund rates. To participate in this new program, be sure to get your quote today!!!

Call **Heffernan Insurance Brokers** at: **(866) 500-6359** and let them know you are a member of Western Regional Master Builders Association. If you currently use a broker for your insurance needs, you may have your broker call **Tangram Insurance** to get the same program and rates, at **(800) 676-2213 ext. 662** and speak to **Riley Binford**.

Don't miss out on these savings! Call today for a quote!!!



HEFFERNAN INSURANCE BROKERS

A Member of the Heffernan Group

(866) 500-6359

Hundreds of new laws for 2008

Overall, 2007 wasn't a landmark year for passing new laws, as the Legislature fought over health care and a multibillion-dollar deficit. But there are a few new laws going into effect that will protect us from others as well as ourselves.

SB 33 forbids smoking in a motor vehicle containing a minor under the age of 18, but the traffic stop has to be made for another offense.

SB 362 says that no one may coerce, compel or require anyone else, such as an employee, to be surgically implanted with a rice-grain sized radio-frequency unit to track their whereabouts.

SB 1613 goes into effect July 1, 2008 and forbids drivers from talking on the phone while driving unless they use a hands-free system.

AB 118 will temporarily raise fees for vehicle registration and smog abatement to fund the development of alternative fuel-vehicle technologies.

AB 233 increases the fine for idling a commercial diesel

vehicle for more than five minutes (certain exceptions apply) to \$300.

AB 392 requires employers with 25 or more employees to allow up to 10 day off, without pay, to spouses of combatants who are on leave from military deployment.

AB 478 requires cyclist to use lights when riding anywhere after dark, including bikeways, sidewalks, or highways.

AB 632 says health care facilities may not retaliate against doctors or anyone else who complain to government agencies about unsafe patient conditions in healthcare facilities.

AB 808 requires anyone renewing or applying for a driver's license to sign a declaration acknowledging that they may be charged with murder if anyone is killed as a result of their driving under the influence.

AB 1291 allows courts to order parents of gang members to attend parenting classes.

AB 1735 forbids the sale of raw milk, which has more than ten coliform bacteria per milliliter.

Beware tax-related email and telephone scams

The Internal Revenue Service recently warned taxpayers to beware of several current e-mail and telephone scams that use the IRS name as a lure. The IRS expects such scams to continue through the end of tax return filing season and beyond.

The IRS cautioned taxpayers to be on the lookout for scams involving proposed advance payment checks. Although the government has not yet enacted an economic stimulus package in which the IRS would provide advance payments, known informally as rebates to many Americans, a scam which uses the proposed rebates as bait has already cropped up.

The goal of the scams is to trick people into revealing personal and financial information, such as Social Security, bank account or credit card numbers, which the scammers can use to commit identity theft.

Typically, identity thieves use a victim's personal and financial data to empty the victim's financial accounts, run up charges on the victim's existing credit cards, apply for new loans, credit cards, services or benefits in the victim's name, file fraudulent tax returns or even commit crimes. Most of these

fraudulent activities can be committed electronically from a remote location, including overseas. Committing these activities in cyberspace allows scammers to act quickly and cover their tracks before the victim becomes aware of the theft.

People whose identities have been stolen can spend months or years — and their hard-earned money — cleaning up the mess thieves have made of their reputations and credit records. In the meantime, victims may lose job opportunities, may be refused loans, education, housing or cars, or even get arrested for crimes they didn't commit.

The most recent scams brought to IRS attention are described below.

Rebate Phone Call

At least one scheme using the word "rebate" as part of the lure has been identified. In that scam, consumers receive a phone call from someone identifying himself as an IRS employee. The caller tells the targeted victim that he is eligible for a sizable rebate for filing his taxes early. The caller then states that he needs the target's bank account information for the direct deposit of the rebate. If the target refus-

es, he is told that he cannot receive the rebate.

This phone call is a scam. No legislation has yet been enacted that would allow the IRS to provide advance payments to taxpayers or that determines the details of those payments. Moreover, the IRS does not force taxpayers to use direct deposit. Those who opt for direct deposit do so by completing the appropriate section of their tax return, with bank routing and account information, when they file; the IRS does not gather the information by telephone.

Refund e-Mail

The IRS has seen several variations of a refund-related bogus e-mail which falsely claims to come from the IRS, tells the recipient that he or she is eligible for a tax refund for a specific amount, and instructs the recipient to click on a link in the e-mail to access a refund claim form. The form asks the recipient to enter personal information that the scammers can then use to access the e-mail recipient's bank or credit card account.

In a new wrinkle, the current version



LAW TALK

By Bruce D. Rudman
Law Offices of Abdulaziz, Grossbart & Rudman



What can form a valid contract?

Quite often, potential clients come into our office stating that they are being sued, or they seek to sue someone else where there is no written contract that bears the signature of one or all of the parties. A common misbelief is that unless there is a signed document, there is no contract.

Generally, the law allows many types of contracts to be oral or written, and contracts can be based upon conduct. There are laws requiring certain contracts to be in writing with certain specifics spelled out – the most commonly required written contracts are for real property transactions or the sale of goods over \$500. However, in some circumstances, a valid contract can be formed by an exchange of documents that are merely exchanged by mail or fax, which are never signed. This article focuses generally on the sale of goods – not real property, and not contracts for personal services. This article is not a substitute for legal advice and your own specific facts should be reviewed by an attorney to be sure that you are adequately protected.

Most of today's businesses have used or come across purchase orders and invoices. For the purchase of goods, an accepted purchase order forms a valid contract. As this article discusses, caution must be taken in exchanging purchase orders and confirmations, as any additional terms in the two documents, unless objected to within a reasonable time, can be binding on the purchaser or the seller. This article shall explore some contract

basics so you understand your rights and obligations.

First, a contract is any accepted offer. In common law times, a contract needed to be supported by sufficient "consideration," which means money or a promise of some performance in exchange. Today, the most minimal token of consideration is sufficient to bind parties to a contract. If you call a supplier and ask him to ship you 100 tires at a stated price, and the supplier agrees to do so and mails you a confirmation of the order, it is likely that a court would find that you have a contract. If the supplier does not sell you those tires, you may be damaged and have certain rights under the law to enforce the contract. Conversely, if the supplier goes to ship you the tires and you decide that you no longer want them, than you may be on the hook for the damages the supplier has incurred.

California has adopted a Commercial Code which has its roots in what is known as the Uniform Commercial Code. These are laws that are in effect in virtually every state of the country, and govern the sale of goods. It is helpful that they are uniform, as many people deal in interstate commerce in their businesses. However, one of the most often confused or misunderstood provisions of the Commercial Code, is a provision regarding additional and conflicting terms in exchanged documents.

In many types of transactions, a rule known as the "Mirror Image Rule" applies. Under this scenario, the offer that is accepted must be exactly the same as the offer. As an

example, imagine that a tire store purchases 100 tires of a specific brand, size, and price from a distributor in New York State. They agree on all of the essential terms, including who will bear the freight prices. The transaction is memorialized by a purchase order from the store and a confirmation from the distributor. The purchase order from the store states that they will take a 2% discount if they pay within ten days. The confirmation of the order, which could be construed as the acceptance of the order, states on its face that no discounts can be taken whatsoever. The acceptance document also has additional terms, including that any returns must be made within five days of the delivery, and that the warranty provided with the tires is only that of the manufacturer and not the distributor.

Under the Mirror Image Rule, the acceptance would not be valid, because the offer clearly specified that a 2% discount would be taken for prompt payment. However under the Commercial Code, as between merchants (businesses and not a business and consumer transaction), unless objected to within a reasonable period of time (measured on case-by-case basis), the conflicting and additional terms may become part of the contract so long as they do not materially alter the agreement. Thus, the contract formed between the tire distributor and the store, assuming neither party objects to the additional or conflicting terms, now provides for the sale, without any discount for

Now Available to All Members: FREE Discount Coupons!

Call the Association office to request these
coupons for you and your employees!!!



Los Angeles Zoo



Sea World San Diego

Six Flags Magic Mountain



Knott's Berry Farm



Coupons include discounted admission and more ...



Aquarium of the Pacific



San Diego Zoo and Wild Animal Park

Universal Studios



Call the Association office at (800) 823-4038!!!

SAFETY ... IT PAYS



Fighting workers' comp fraud in the workplace

According to OSHA, companies that treat their workers fairly and with concern have the fewest job injuries and fraudulent WC (workers' compensation) claims.

As a supervisor, here are the Top 10 proactive things you can do to fight WC fraud in the workplace.

Educate your employees. Employees should understand both their rights concerning legitimate WC claims and the penalties for fraudulent ones. Hold a safety meeting on the topic, and use posters, flyers and payroll stuffers to advance your fraud message. And don't be afraid to promote your tough stance against fraud by informing employees that all suspicious claims will be investigated and prosecuted.

Maintain a safe work environment. Initiate a formal Safety or Injury Prevention Program to minimize safety hazards.

Implement a Return to Work program. Experience shows that injured workers recover faster when they return to work. Returning to regular work usually occurs more quickly when transitional or modified duty is offered to the injured employee.

Keep in touch. Employees who feel valued are less likely to cheat the system. Keep in touch with an injured employee and make it clear you're looking forward to having them back at work as soon as they have their doctor's approval.

Partner with a reputable medical provider. Partner



SAFETY CORNER

Cal/OSHA Safety Publications

Please visit the following address on the web to download helpful safety posters, guides and pamphlets for a safer workplace.

<http://www.dir.ca.gov/dosh/PubOrder.asp>

with a reputable medical clinic to serve as your company's primary provider to ensure workplace injuries are treated by a trustworthy physician.

Establish reporting procedures. Employees and supervisors should be familiar with reporting procedures, and keep accident forms on hand. Also, stress the importance of reporting injuries promptly.

Investigate immediately. If an accident occurs, investigate the accident while memories are still fresh. Separately talk to each witness and co-worker about the injury. Be sure to relay any suspicions about the incident to your claims adjuster.

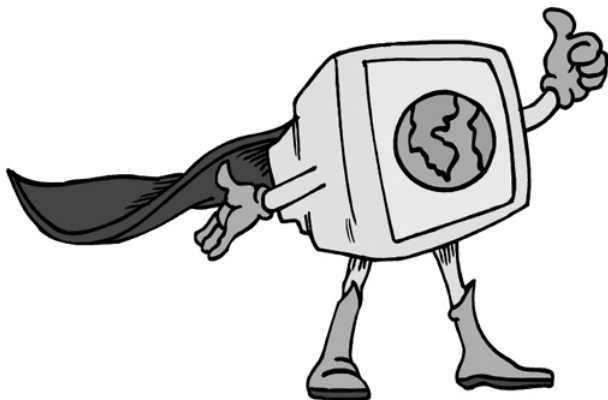
Conduct exit interviews. You should document the work-related activities of employees who are about to be laid off or fired. Conduct exit interviews

that include questions about the employee's physical condition and any on-the-job accidents or injuries that have not been reported. This may help to deter fraudulent claims or refute future false claims.

Be cautious. Fraud is a serious accusation that if not handled properly could put you in the middle of a lawsuit for libel or slander. Give your company the added protection by working with your claims carrier to validate your suspicions, and to determine if the incident should be reported to the appropriate authorities.

Be honest. Honesty works both ways. Don't knowingly provide false or misleading information with regard to entitlement to WC benefits in order to discourage an injured worker from pursuing a claim.

Your association has a new website!
Reach us at



www.califmerchants.com

Scam: Filing a tax return is the only way to get a refund

Continued from page 2

of the refund scam includes two paragraphs that appear to be directed toward tax-exempt organizations that distribute funds to other organizations or individuals. The e-mail contains the name and supposed signature of the Director of the IRS's Exempt Organizations business division.

This e-mail is a phony. The IRS does not send unsolicited e-mail about tax account matters to individual, business, tax-exempt or other taxpayers.

Filing a tax return is the only way to apply for a tax refund; there is no separate application form. Taxpayers who wish to find out if they are due a refund from their last annual tax return filing may use the "Where's My Refund?" interactive application on this Web site, IRS.gov. The only official IRS Web site is located here at www.irs.gov.

Audit e-Mail

Another new scam brought to IRS attention contains features not seen before by the IRS. Using a technique calculated to get almost anyone's attention, the e-mail notifies the recipient that his or her tax return will be audited. This is the first scam of which the IRS is aware that uses this to get the victim to respond.

Unusual for a scam e-mail, it may contain a salutation in the body addressed to the specific recipient by name. Most scam e-mails seen by the IRS are sent using the same technique used by spammers, in which hundreds of thousands of messages are sent to potential victims based on Internet address. Because of the volume, the typical scam e-mail is not personalized.

This e-mail instructs the recipient to click on links to complete forms with personal and account information, which the scammers will use to commit identity theft.

This e-mail is a phony. The IRS does not send unsolicited, tax-account related e-mails to taxpayers.

Changes to Tax Law e-Mail

This bogus e-mail is addressed to businesses, accountants and "Treasury" managers. It instructs them to download information on tax law changes by clicking on a series of links to publications on businesses, estate taxes, excise taxes, exempt organizations and IRAs and other retirement plans. The IRS believes that clicking on a link downloads malware

onto the recipient's computer. Malware is malicious code that can take over the victim's computer hard drive, giving someone remote access to the computer, or it could look for passwords and other information and send them to the scamster. There are other types of malware, as well.

The urls contained in the link are not legitimate IRS Web addresses. All IRS.gov Web page addresses begin with <http://www.irs.gov/>.

Paper Check Phone Call

In a current telephone scam, a caller claims to be an IRS employee who is calling because the IRS sent a check to the individual being called. The caller states that because the check has not been cashed, the IRS wants to verify the individual's bank account number. The caller may have a foreign accent.

In reality, the IRS leaves it entirely up to the individual to choose to cash or not cash a paper check. The IRS has no business need to know, and does not ask for, bank account or similar information, except when taxpayers indicate on their tax return that they are opting for the direct electronic deposit of their refund. In that case, however, it is the individual's responsibility to provide the IRS with the correct bank routing and account numbers on the tax return; the IRS does not contact taxpayers to verify the information.

What to Do

Anyone wishing to access the IRS Web site should initiate contact by typing the IRS.gov address into their Internet address window, rather than clicking on a link in an e-mail or opening an attachment.

Those who have received a questionable e-mail claiming to come from the IRS may forward it to a mailbox the IRS has established to receive such e-mails, phishing@irs.gov, using instructions contained in an article titled "How to Protect Yourself from Suspicious E-Mails or Phishing Schemes." Find the article by visiting IRS.gov and entering the words "suspicious e-mails" into the search box in the upper right corner of the front page.

Those who have received a questionable telephone call that claims to come from the IRS may also use the phishing@irs.gov mailbox to notify the IRS of the scam.

Contract

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prompt payment, and with the limitations on returns and warranties imposed on the seller.

This points out how

important it is for you to review the documents that you use, and verify all purchases that you make to make sure that the terms haven't changed.

Assuming that you have a contract that is valid, you may wonder what are

your remedies in the event of the failure of the seller or buyer to fulfill their obligations? Well, if a seller fails to make good on its contract, than the remedies that the buyer has include the right to purchase the same item

elsewhere, and sue the seller for the difference in the cost paid. That is, if the tires in the above example were \$100 each, and the seller refuses to make good on the sale, the buyer can purchase those

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for \$105 each from someone else, and sue for the difference in cost, plus all other incidental and consequential damages as a result of the breach. Those could include increased delivery cost, costs of ordering, etc. It is also possible that any lost sales due to the failure to make the delivery could also be attributed to the seller. Where the goods are unique or different, an additional buyer's remedy could be specific performance—that is, an order from a court ordering that the seller sell the product to the buyer.

On the other hand, if the buyer breaches the agreement, the seller's remedy would be to sell the tires to whomever it could sell them to, and if they are sold for a lesser price, to sue the buyer for the difference, plus the seller's incidental and consequential damages.

Both parties have an obligation to attempt to mitigate their damages. This means that the seller cannot dump the tires on the open market for an unreasonably low price if there are other buyers who may buy them for a price close to or even more than what the buyer agreed to pay. Similarly, the buyer cannot go out and purchase the tires from the most expensive distributor where there are other sources available, merely to seek damages against the other party.

One common dispute that arises is where the parties agree to payment on credit terms, and thereafter the seller decides that they want payment on delivery or payment in advance. This would be a breach of the agreement. However, in some circumstances where the seller learns of adverse financial information about the buyer, it can demand assurances that the buyer has the ability to pay the costs of the shipment. If that request for assurances is not timely responded to, then the seller may be justified in canceling the transaction or changing the payment terms. In this type of scenario, it is essential that you seek legal counsel to advise you as to your rights.

In reviewing the various documents that are exchanged in a transaction, you should also be aware of contract clauses that can govern your dispute. There may be clauses that state that the transaction will be governed according to the laws of a particular state, different than yours. Another provision might state that any suit might be brought in a particular location. This could mean that in the event of a dispute,

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Web Corner

The Internet is a growing resource for merchant industries. Web Corner is a place for you to share websites that have helped you in your business life. Please send recommendations to greleht@aol.com for inclusion in the column.



e-file: A smart way to do your taxes

Every year, more taxpayers discover the benefits of filing their tax return electronically. Whether you use a professional tax preparer authorized by the IRS or do it yourself from a home computer, there are many reasons to consider e-filing your tax return this year.

Fast. No more last minute trips to the Post Office – with e-file, just hit Send

Accurate. e-file checks for errors and necessary information, increasing the accuracy of your return and reducing the need for correspondence with the IRS to clarify errors or omissions.

Easy. e-file leads you step-by-step. You can usually file a state tax return at the same time you electronically file your federal return.

Quicker Refunds. Generally, when you use e-file, your refund will be issued in about half the time it would take if you filed a paper return. Those who choose Direct Deposit will get their refund in even less time.

Peace of mind. With e-file, once the return is accepted for processing, the taxpayer is notified electronically, acknowledging the IRS received the return.

Payment options. With e-file, you can file your return early but wait to pay any balance due by the April deadline. You can also pay electronically, using a credit card, electronic funds withdrawal or, in some cases, the Electronic Federal Tax Payment System.

The IRS is again offering eligible taxpayers the opportunity to electronically prepare and file their tax returns for free through Free File, a program offered in partnership between the IRS and private-sector software companies. For information on taxpayer eligibility, access the Free File Web page at IRS.gov. For more information on e-file, check the IRS Web site at www.irs.gov/efile.

Remember that for the genuine IRS Web site be sure to use .gov. Don't be confused by internet sites that end in .com, .net, .org or other designations instead of .gov. The address of the official IRS governmental Web site is www.irs.gov.

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you must travel great distances to resolve your dispute. Where contracts have a choice of law provision without a venue provision, it could mean that the parties may have to litigate their case in California, governed by some other state's law. In certain types of transactions, the differences can be significant.

The contract may also have an attorney's fees clause, which makes the breaching party responsible for those costs of collection incurred by either party in the event of a breach. Note that many contracts have attorney's fees clauses that are apparently one-sided. That is to say, they state that if the buyer breaches the

agreement, the costs of collection will be borne by the buyer. However, for contracts governed under California law, California has a statute that states that wherever there is an attorney's clause that is one-sided, it is reciprocal, or applies to either party that breaches the agreement.

The above examples only apply to the sale of goods. The sales of services, real property, and certain specific types of items, including household products, may have different rules that apply to them. If you conduct your business by the use of purchase orders, invoices, or order confirmations, you should consult with an attorney to have your documents state all of the essential terms of your transaction. In that way, you are not surprised that other provisions are imposed on your transaction.

Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients. The presentation and/or documents are of a general nature and are intended to highlight areas of the subject matter and should not be used as a substitute for specific legal advice. You should seek the aid and advice of a competent attorney and/or accountant instead of relying on the presentation and/or documents. Bruce D. Rudman can be reached at Abdulaziz & Grossbart, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000; Facsimile (818) 760-3908; or by E-Mail at bdr@aglaw.net. On the Internet, visit our Website at www.aglaw.net.

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