

Controlling Workers' Moonlighting a Tricky Job

By Holly Culhane, Contributing Columnist



The good news is that Kern County's economy, like the nation's, is recovering from the Great Recession of 2008-2009. But many people are still digging out of a deep financial hole. As evidence of this, a recent study by the Corporation for Enterprise Development revealed nearly half of California households are in chronic financial stress and have little or no savings for emergencies.

The study painted a bleak financial picture for both low- and middle-income people, including those who earned above-average wages. Based on several measures of financial well-being, researchers ranked California 34th among the 50 states. California ranked above the national average in unemployment, credit-card debt and personal bankruptcies.

Researchers found 45.9 percent of California's residents are "liquid asset poor." The average Californian carries \$12,693 in credit card debt.

So it is not surprising that many California workers are moonlighting -- holding down more than one job to make ends meet and to keep bill collectors away from their doors.

That leaves California's employers with a dilemma: Should they allow their employees to moonlight?

Whether to allow moonlighting really is not the question. State laws restrict a company's ability to interfere with an employee's after-hours activities. This restriction, in many cases, also applies to moonlighting.

But an employer can and should control the potential impacts moonlighting may have on a worker's performance at his or her primary job.

Some issues to consider when addressing moonlighting:

Should you have a written policy? Some companies avoid having moonlighting policies, relying instead on related policies – conflict of interest policies, for example – to head off problems. But a written policy can be useful if it explains employee performance expectations and how other policies apply, and requires employees to inform the appropriate person in writing if they have another job. Consult with an attorney or human resources consultant to ensure any moonlighting policy that is adopted complies with state laws.

What should a moonlighting policy cover? While it should not ban moonlighting, it can discourage it. The policy should stress that moonlighting must not interfere with an employee's job performance. And "after-hours job" means just that – it must be performed after an employee leaves his or her primary

work place. Performing work for a moonlighting job while “still on the clock” can be grounds for termination.

How do conflict of interest concerns apply to moonlighting? To protect trade secrets, many companies have “non-compete” policies that apply to employees. Although California disfavors non-compete policies after employment ends, employers have greater rights while the employee is still employed to restrict an employee from working for a competing company. Beyond working for competing companies, employees may have “conflicts of interest” if they moonlight for their employer’s vendors or customers.

Should an employee be required to obtain approval before moonlighting? Some companies rely on strong written guidelines, rather than require pre-approval, to control workers’ moonlighting. Other companies require pre-approval. Often a worker is not familiar with all of his employer’s competitors and potential conflicts that might exist if he or she moonlights for a company’s vendors or customers. Even with pre-approval, carefully consider outright banning of outside employment. Setting limits may be a safer way to go.

Moonlighting problems can be prevented when employers state clearly: Employees are expected to be at work on time and prepared to work, as well as perform their job at a level acceptable to their employer. They are expected to make their primary job a priority.

This article written by Holly Culhane first appeared online and in The Bakersfield Californian on February 27, 2014. Holly Culhane is president of the Bakersfield-based human resources consulting firm P.A.S. Associates. She can be contacted through her website www.pasassociates.com and through the [PAS Facebook](#) page or by phone at 631-2165.

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