



# Sterling Scott Winchell

A Professional Law Corporation

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## LAW NEWSLETTER

### Visit Our New Website!

Visit the new website for Sterling Scott Winchell at: [www.OCLawSolutions.com](http://www.OCLawSolutions.com)

The website will provide you with basic legal information, attorney resumes, and contacts. You will find articles on legal issues, advice on how to decide if you "have a case," and a place where you can submit your questions on-line.

### In This Newsletter

The articles in this newsletter were written by the attorneys at Sterling Scott Winchell. They are intended to provide you with introductory information and are not intended as a solicitation or as full legal advice. No intent is made to guarantee the results of any legal matter.

### LIEN LAW

FOR

### CONTRACTORS & HOMEOWNERS

Whether you are a large scale contractor or a homeowner with a small home improvement project, knowing the legalities of mechanics liens is important.

This article will provide you with some basic information. However, because the laws concerning mechanics liens are complex you should speak with an attorney for assistance or advice on a specific situation.

#### DEFINITION OF A LIEN

Liens are defined by Civil Code section 2872 as a "security of performance

of an act." Liens are created upon the execution of a lien contract and can work to assure that payment for work is made.

#### IMPLICATIONS OF A MECHANICS LIEN

Mechanics liens assist contractors in receiving payment for their work. Homeowners, however, do not want to have a lien made on their property as it can impact financing and sales and should know the ground rules of when a lien may be made against them.

#### LIEN BASICS

Liens generally have priority over each other according to the time of their recordation so they also have significance in the event of a bankruptcy. However, the priority

date for mechanics liens is the date that the contractor's work or improvement began (i.e. when some recognizable work or labor on the property occurs) and not the date that the lien contract was made. Mere markers and stakes, for example, are not enough to constitute commencement of work or improvement.

#### MORE LIEN INFORMATION

A mechanics lien may not be recorded before completion of the work or improvement as this would be premature and have no legal effect.

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STERLING SCOTT WINCHELL

Our clients are very important to us. Our goal is to provide each one of them with knowledgeable, competent, efficient, and thorough representation in all legal matters.

### AREAS OF PRACTICE

STERLING SCOTT WINCHELL can provide you with legal assistance for:

- ◆ Asset Protection
- ◆ Business Disputes
- ◆ Civil Appeals
- ◆ Contractor Law
- ◆ Contracts
- ◆ Education Law
- ◆ Employment Law
- ◆ Estate Planning
- ◆ General Civil Practice
- ◆ Misdemeanor Criminal Practice
- ◆ Homeowner Association Matters
- ◆ Incorporations
- ◆ Insurance Litigation
- ◆ L-1 Visas
- ◆ Landlord/Tenant Law
- ◆ Mediation
- ◆ Premises Liability
- ◆ Real Property Law
- ◆ Will Contests

Wondering if you have a "case"?

Give our office a call for a free in-person or phone consultation.



For general contractors the mechanics lien must be recorded after completing the contract . . .

## LIEN LAW (CONTINUED FROM PAGE 1)

A mechanics lien may not be recorded by a subcontractor or material supplier until the contractor has given the owner a written notice known as a "20 Day Preliminary Notice." If the contractor is under direct contract with the owner, or he or she is performing actual labor for wages, the notice, when given, should be no later than 20 days after the labor was first furnished or the lien may not cover the labor furnished earlier than the previous 20 days.

For general contractors the

mechanics lien must be recorded:

1. After completing the contract, but within 90 days of completion of the work of improvement if no "notice of completion" has been recorded by the owner;
2. Or 60 days after completion if a "notice of completion" has been recorded.

Anyone other than a general contractor must file the mechanics lien after:

1. Ceasing the furnishing of labor, services, equipment or materials, and before the expiration of 90 days after completion of the work of improvement if no notice of completion or cessation has been recorded,
2. Or 30 days after the recordation of a notice of cessation or completion.

Completion is defined as actual completion of the work of improvement,

## THE BASICS OF EMPLOYMENT & LABOR LAW

Whether you are an employer or employee the basics of Employment and Labor law are important to know. The following are some of these basics:



### Federal Laws and State Laws

Two bodies of law govern employment and labor. Federal Law includes Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Federal Equal Pay Act. In California the Fair Employment and Housing Act (FEHA) along with some specific labor codes cover employment and labor. The Federal laws cover only 5 rights but California laws add another 10 rights. Federal laws generally exempt the smaller companies but California laws do not.

Understanding the differences between the two sets of laws becomes especially im-

portant when making a claim. An attorney who specializes in Employment and Labor law will be able to determine how the bodies of law best pertain to the specifics of the situation. The selection of the pertinent law will affect not only the viability of the claim but will also affect the damages. Federal laws generally allow for smaller amounts of damages above the "front pay" (the lost wages that should have been the benefit of the employment bargain). State laws allow for substantially more monetary damages than federal laws.

### Discrimination in the Workplace

Workplace discrimination requires the following:

1. That there is an employee/employer relationship
2. That the employer is covered by one of the pertinent employment or labor laws (i.e. has sufficient number of employees); and
3. That the plaintiff is a member of a protected class.

Protected classes are: race, religion, creed, color, national origin, ancestry, sex (including orientation, pregnancy, marital status, gender identity), age, mental disability, and veteran status.

For discrimination to occur the victim must be a member of one of the protected classes. The discriminating party must target a member of that class but not others who are non-members of the class. Employers who are, for example, disagreeable with all employees are not liable for workplace discrimination.

Discrimination comes in two forms:

1. Disparate Impact Discrimination
  2. Intentional Discrimination
- Disparate impact occurs when what appears to be a facially neutral employment policy causes certain employees or even applicants to experience a negative impact that other employees or applicants do not.

An attorney who specializes in Employment and Labor law will be able to determine which body of laws best pertains to the specifics of the situation.

**LIEN LAW** (CONTINUED FROM PAGE 2)

but equivalents to completion are: (a) a cessation of labor for 60 continuous days on the work of improvement; (b) a cessation of labor of 30 continuous days, if the owner, after the 30 days, records a "notice of cessation; (c) occupation or use of a work of improvement by the owner or his agent, accompanied by cessation of labor; or (d) the acceptance by the owner or agent of the work of improvement.

When a mechanics lien is recorded against a property, it

only binds that property for 90 days, unless an action to foreclose on that lien is brought in the proper court within that 90 day period by the contractor.

After commencing an action for foreclosure, a "*lis pendens*" should be recorded, which gives all persons notice of the pending action.



**If you need further assistance with a lien or prevention of a lien, please give the law office of**  
**STERLING SCOTT WINCHELL**  
**a call at: (949) 387-9191**

**LINDA A. ALBERS**  
**OF COUNSEL ATTORNEY**

Linda A. Albers, of counsel at **STERLING SCOTT WINCHELL**, can assist you in a variety of legal matters including those in the areas of Educational Law, Personal Injury, Contracts, and Business in the Non-Profit Sector. You may view her resume on the website at

[www.OCLAWSOLUTIONS.COM](http://www.OCLAWSOLUTIONS.COM)

For questions, Linda A. Albers can be reached at

[ALBERS@OCLAWSOLUTIONS.COM](mailto:ALBERS@OCLAWSOLUTIONS.COM)

**THE BASICS OF EMPLOYMENT & LABOR LAW**  
(CONTINUED FROM PAGE 2)

Intentional Discrimination occurs when an employer directly causes the discrimination. While there are rarely "smoking gun" memos or other evidence to show this, often patterns can be shown that establish this intent.

**Harassment in the Workplace**

A claim of workplace harassment can occur with any type of discrimination on a protected class. Sexual harassment, however, is most common. There are two types of sexual harassment:

1. Quid pro Quo where an employer uses his/her position of power to create the reasonable belief that the employee must perform some type of sexual act in order to maintain employment.
2. Hostile Work Environment where the whole work environment is charged with negative behavior that stems from some type of attack on a protected employee class. The

behavior must be ongoing and pervasive to rise to the level of hostile work environment. However, employer behavior that "shocks the conscience" may also create a hostile work environment even if done infrequently.

**Special Areas of Note**

Certain workplace situations have recently become problematic. Religious discrimination is at the forefront due to the increase in Middle Eastern workers who are asking for time during the workday to pray. The key issue is whether the employer is able to provide a reasonable accommodation for religious activities.

Requiring English speaking is discriminatory unless speaking English is necessary for safety reasons. If safety is the issue then the employer must carefully identify hours and days when English must be used. A corollary to speaking English is the issue of the

employee being able to be understood. Discriminating in hiring or promoting an employee based on being difficult to understand is actionable. Discrimination in the workplace based against the transgendering employee can be construed as a hate crime and could lead to a personal judgment against the violator.

The definition of a disability may be stretched to include the perception by others that the person is disabled. For example a person with a facial scar may not see themselves as disabled but others may, particularly if the issue of looks is associated with a job such as a receptionist. Employers must be careful in drafting job descriptions to avoid inadvertently discriminating.

**Summary**

Employment and Labor laws are complex, far-reaching, and frequently change. Employers should always consult an attorney who specializes in this

area to be sure that their policies and day to day activities meet the legal parameters.

Employees who believe that they may have a claim should consult an attorney as soon as possible to avoid losing their rights due to a statute of limitation.

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- Free phone or in-person initial consultation
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- General legal counsel in our areas of practice

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You may submit your legal inquiries on-line on the Contact page of our website.  
Our attorneys will review your information and contact you with a response.

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