

2014 Labor Law Update

LEGISLATIVE AND REGULATORY CHANGES AND IMPORTANT COURT DECISIONS during this last year made significant changes for employers. Beginning with State Laws, a summary of some of the most important ones you need to know to prepare for this year.

MINIMUM WAGE

AB 10 raises California's current minimum wage of \$8 per hour by two, one-dollar increments: to \$9 per hour effective July 1, 2014, and to \$10 per hour effective January 1, 2016.

The new law directly impacts non-exempt minimum wage hourly workers. However, it also affects lower-salaried exempt employees and other groups of non-exempt employees. Employers should review their compensation plans to ensure they continue to comply with laws impacted by the minimum wage. The key areas impacted by the increase in minimum wage are:

- Exempt Employees
- Inside Salesperson - Commission Exemption
- Tools or Equipment
- Calculation of Split Shift Premiums
- Collective Bargaining Agreements
- Voluntary Crediting Agreements

DOMESTIC WORK EMPLOYEES

AB 241 enacts the Domestic Worker Bill of Rights, which provides for specific overtime pay for certain in-home employees; a "domestic work employee who is a personal attendant." Those with in-home help will need to carefully determine whether the new law applies to them because AB 241 contains many specific definitions and exclusions. California's rules take effect on January 1, 2014. The U.S. Department of Labor also issued new rules on personal attendants that take effect on January 1, 2015.

MEAL AND REST PERIODS – HEAT ILLNESS RECOVERY PERIODS (SB 435)

- Requires employers to allow employees who work outdoors to take a rest break ("recovery period") to cool down to prevent heat illness. Forbids employers from requiring employees to work during a recovery period.
- Requires employers who fail to provide one or more recovery periods in any workday to pay employees an extra hour of pay at their regular rate.
- Does not apply to employees who are exempt from Wage Order meal and rest break regulations.

PAID FAMILY LEAVE EXPANSION (SB 770)

- Broadens the definition of "family" for purposes of PFL eligibility to include siblings, grandparents, grandchildren, and parents-in-law.

- Defines "sibling" as a person related to an employee by blood, adoption, or marriage through a common legal or biological parent.
- Defines "parent-in-law" as the parent of a spouse or a domestic partner.

DAMAGES FOR MINIMUM WAGE VIOLATIONS

AB 442 expands the penalty available for citations issued by the Labor Commissioner for failing to pay minimum wage to include a requirement that the employer pay liquidated damages to the employee, in addition to existing penalties.

LABOR COMMISSIONER LIEN ON PROPERTY FOR EMPLOYEE COMPLAINTS

AB 1386 requires that the amount due under a Labor Commissioner order, decision or award that has become final shall create a lien that the Labor Commissioner may record on the employer's real property.

PROTECTIONS FOR EXERCISING RIGHTS UNDER LABOR CODE

AB 263 amends Labor Code Section 98.6, which protects employees who assert their rights under the Labor Code; for example, by complaining of wage theft. AB 263 prohibits retaliation or adverse action against employees for exercising their rights under the Labor Code (current law only explicitly prohibits discharge and discrimination).

AB 263 also expands protected conduct under Labor Code Section 98.6 to specifically include a written or oral complaint by an employee that he/she is owed unpaid wages.

Critically, AB 263 adds a civil penalty of up to \$10,000 per employee per violation.

ATTORNEYS' FEES – PREVAILING PARTY WAGE CLAIMS

SB 462 states that employers who win wage-claim lawsuits may recover attorneys' fees and costs from the employee only if a trial court finds that the employee filed the lawsuit in bad faith.

EMPLOYEE WAGE WITHHOLDINGS – CRIMINAL PENALTY

SB 390 creates a criminal penalty for an employer that fails to remit withholdings from an employee's wages that were made pursuant to state, local or federal law.

GARMENT MANUFACTURER REQUIREMENTS

AB 1384 creates a civil penalty for a garment manufacturer's failure to display his/her name, address and registration number at the front entrance of the premises.

CAR WASH INDUSTRY

AB 1387 increases the bond requirement for employers in the car wash industry from \$15,000 to \$150,000, but exempts an employer from the bond requirement if the employer has a collective bargaining agreement in place that meets specified criteria.

FARM LABOR CONTRACTORS – SUCCESSOR LIABILITY

SB 168 makes a successor farm labor contractor liable for wages or penalties owed by a predecessor farm labor contractor under certain specified circumstances.

PREVAILING WAGES

A number of bills signed this year relate to prevailing wages. Employers that provide services or construction work for the government or public entities must pay the prevailing wage, which usually is significantly higher than the minimum wage.

The bills include AB 1336, SB 7, SB 54, SB 377 and SB 776. One notable bill (SB 54) expands payment of prevailing wages to privately financed refinery construction projects.

DESIRE IRRELEVANT FOR SEXUAL HARASSMENT (SB 292)

- Adds one sentence to the Fair Employment and Housing Act (FEHA): "Sexually harassing conduct need not be motivated by sexual desire."
- This bill was designed to overturn a 2011 Appellate Court decision. This case found that male iron workers who made graphic sexual insults against a male apprentice lacked sexual desire and so did not commit sexual harassment.
- SB 292 does not change the law, but simply reiterates that sexual intent or desire is not the sole method of proving sexual harassment.

DISCRIMINATION AND RETALIATION PROTECTIONS

Several new laws will expand employee protections for 2014.

Protection for Military and Veterans

AB 556 adds “military and veteran status” to the list of categories protected from employment discrimination under the Fair Employment and Housing Act.

Whistleblower Protections

SB 496 expands whistleblower protections to include reports alleging a violation of a local rule or regulation. It also protects employees who disclose, or may disclose, information regarding alleged violations “to a person with authority over the employee or another employee who has authority to investigate, discover or correct the violation.”

Finally, SB 496 prohibits retaliation against an employee because the employer “believes the employee disclosed or may disclose information.”

Added Limits to Criminal History Inquiries

Current California law prohibits employers from asking employees or applicants about, or using as a factor in employment decisions, any arrests that did not result in conviction (unless pending trial), arrests that led to diversion programs, or older marijuana convictions.

SB 530 now adds to that list any information concerning a conviction that has been judicially dismissed or ordered sealed unless: (1) the employer is required by law to obtain information regarding a conviction of an applicant; (2) the applicant would be required to possess or use a firearm in the course of his or her employment; (3) an individual who has been convicted of a crime is prohibited by law from holding the position sought by the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed; or (4) the employer is prohibited by law from hiring an applicant who has been convicted of a crime.

CA AB 1083 - Maximum 60-day Waiting Period

California regulators (the California Department of Insurance and the Department of Managed Health Care) have confirmed that the maximum 60-day waiting period applies to large insured plans as well as to small insured plans.

The AB 1083 provisions that limit the waiting period to 60 days are included not only in sections of the bill that amend California small group law, but also in sections that amend and replace California law that

applies to all size health insurance and managed health care products.

IRS MILEAGE REIMBURSEMENT RATE:

Beginning January 1, 2014, the recommended IRS reimbursement rate for business miles driven is 56 cents per mile.

PHYSICIANS-SURGEONS OVERTIME EXEMPTION RATE:

Effective January 1 2014, the hourly rate is \$73.57, up from \$72.70.

COMPUTER PROFESSIONAL OVERTIME EXEMPT RATE:

Effective January 1, 2014 the hourly rate is \$40.38, up from \$39.90, the minimum monthly salary is \$7010.88 and the annual salary is \$84,130.53.

SAN FRANCISCO RAISES MINIMUM WAGE

San Francisco minimum wage Jan. 1, 2014 is \$10.74 per hour.

SAN JOSE SET CITY MINIMUM WAGE

San Jose increased the city’s hourly minimum wage to \$10.15 per hour as of Jan. 1, 2014.

COURT LABOR RULINGS

Piece Rate Compensation Complications,

Gonzalez v. Downtown LA Motors In this case the court sent a shockwave through the automobile repair industry, which for decades has paid auto mechanics a pre-established wage for completing a pre-defined repair service — a prototypical piece rate pay plan.

The California Court of Appeal ruled that automobile mechanics, who the Court acknowledged earned at least minimum wage for every hour worked, were entitled to separate hourly compensation for time not spent performing auto repairs.

In a startling class action ruling, the Court awarded the automobile mechanics in excess of \$1.5M. While the result is limited to the specific facts of the *Gonzalez* case, the ruling presents considerable concerns for any employer whose piece rate employees experience down-time during the workday.

Too Much Time in Manual Labor

Heyen v. Safeway (CA Dist. 2 Ct.)
Linda Heyen, a former assistant manager for Safeway Inc. (Safeway). brought an action to recover unpaid overtime pay, contending Safeway should have classified her as a “nonexempt” employee because she regularly spent more than 50 percent of her work hours doing “nonexempt” tasks such as bagging groceries and stocking shelves. An advisory jury and the trial court agreed with Heyen and awarded her overtime pay of \$26,184.60, plus interest.

Safeway appeals, contending that the trial court failed to properly account for hours Heyen spent simultaneously performing exempt and nonexempt tasks—i.e., “actively . . . manag[ing] the store while also concurrently performing some checking and bagging of customer grocery purchases.” Safeway urges that, consistent with federal law, the trial court should have classified as “exempt” all hours during which Heyen simultaneously performed exempt and nonexempt tasks. Because the court failed to do so, Safeway claims it prejudicially erred, requiring a reversal of the judgment.

The Appeal Court disagreed with Safeway’s analysis as inconsistent with California law and affirmed the judgment for Heyen.

GOOD PRACTICES

- **Use the New I-9 Form** —
- **Teach the New GHS Haz Com.**
- **Pay Details Form** — Requires employers to provide non-exempt employees, at the time of hire or whenever there is a change to their rate of pay.
- **Take Sex Harassment Rules Seriously** — Major court decisions and new laws have created substantially greater complexity to sex harassment rules, it is not to be messed with.
- **Review “Salary-exempt” Positions** — Overtime penalties are substantial for misclassified personnel.
- **No “Explicit Wage Agreements” for non-exempt employees.**
- **Employee Clock Outs For Meal Periods** — Even with the Brinker Case decision, it is still important to protect yourself with proof of meal periods in 5 hours.
- **Do Not Use On-duty Meal Agreements** — Do not allow employees to work at meal times.
- **Consider Everyone s Protected Class Employee** — Everyone is a victim, begin from that premise.
- **Learn The “Interactive Process”** — Always get more information on how you can accommodate.
- **Bring Handbooks Up To Date** — The laws change, your policies need to change with the law.
- **Create/Review Sales Commission Contracts** — You’re the author, poor language will be construed against you.
- **Pregnancy Disability Leave** — Employers with 5 or more employees must continue to maintain and pay for health coverage, if they have a group health plan, for eligible female employees who take Pregnancy Disability Leave (PDL) up to a maximum of four months in a 12-month period.



Courtesy Pacific Employers

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