



### WHAT'S NEWS!

#### October Seminar - A Legislative Roundup!

**The new multi-year, multi-tier minimum wage facing The California Legislature has been very active this year. We will be hosting a Legislative Roundup for this October to cover the new laws.**

New regulations that have been enacted since the first of the year make it important to review their effect for planning purposes. Minimum wage increases for the near future and immediate discrimination law changes are topics that we will cover.

Because October's talk is our Guest Speaker Seminar, we have invited **Susan K. Hatmaker** with the *Hatmaker Law Group* of Fresno, to address the changes in labor law that affect the California Employer.

Susan Hatmaker handles labor and employment law and litigation. She counsels and trains employers about employment compliance on state and federal law. She also provides representation of school districts in charter school law and related matters.

Pacific Employers will host this seminar at the Builders Exchange at 1223 S. Lovers Lane at Tulare Avenue, Visalia, CA. RSVP to Pacific Employers at 733-4256. This mid-morning seminar include refreshments and informational handouts. Thursday, October 20th, 2016, 10 - 11:30am. [PE]

### Pacific Employers Goes Facebook!

**We are finally taking advantage of another way to connect with our clients, Pacific Employers now has a Facebook Page!** We plan to bring you new information and the answers to many of your questions in an organized and timely fashion with the use of our FB page.

With our formerly monthly Newsletter going to a quarterly publication schedule, we also will be able to welcome other staff members to the writing tasks by allowing all of our office to post information on our **Facebook** page.

Visit and **Like** Pacific Employers new **Facebook** page at

<https://www.facebook.com/pacificemployers/>

[PE]

### Attendance Record & Vacation Scheduler Enclosed!

#### President's Report ~Dave Miller~

#### Vacation & Attendance Forms!

**Enclosed in this edition of the *Management Advisor* is our 2017 Vacation Scheduler** that provides the opportunity to visually and graphically display the employees' vacation choices. If you need additional copies, please contact our office or just stop by!



#### ATTENDANCE RECORD

Also this month we supply you with the "2017 Attendance Record." Its purpose is to provide a way to keep track of an employee's annual attendance on a single sheet.

A shorthand guide for keeping track of absences, injuries, leaves of absence, sick days, vacations, etc., is included on the form. If you need additional copies, you may download a **PDF** copy from our website **Forms** page or you may contact our office.

#### UPCOMING 2017 ALL-IN-ONE POSTER

**In December, instead of the latest "Management Advisor" you will be receiving the updated, 2017 version of the *Pacific Employers' "All-in-1" Poster* which includes the required federal and state postings for most businesses.**

Included in the updated poster is a new Cal/OSHA poster, a new DFEH posting, a new Federal Polygraph notice and the new Federal FMLA poster.

#### PE GOES FACEBOOK

We are finally taking advantage of another way to connect with our clients, Pacific Employers now has a Facebook Page!

We plan to bring you new information and the answers to many of your questions in an organized and timely fashion with the use of our FB page. [PE]



"We contend that for a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle."  
-- Sir Winston Churchill (1874-1965)

## Recent Developments

### An Employers Guide to DOL OT

**The U.S. Department of Labor's rule that doubles the annual salary threshold for receiving overtime pay to \$47,476 comes with a White House estimates that it will provide overtime pay to an additional 4.2 million workers, leaving business owners wondering how they will foot the bill for the change or keep employees from racking up extra hours.**

The new overtime regulations are rather uncomplicated as a matter of law but there are major business and employee relations considerations when it comes to implementation.

#### THE LAW IN GENERAL:

- The minimum salary will be \$913 per week. As noted, that is double what the number was under the 2004 regulations, \$455 per week.
- While the increase is substantial, for the first time, an employer may include some compensation other than salary to meet the minimum salary. More specifically, employers can include non-discretionary bonuses, incentive payments and commissions to satisfy up to 10 percent of the minimum weekly salary.
- The minimum salary will be adjusted every three years. The DOL had proposed every year.
- There will be no changes to the primary duty test. The DOL had, by the questions it asked in its proposed rule, suggest it might move to a percentage test, as is the case in California. Instead, the test remains the same: primary means main, principal or most important.
- The regulations go into effect on December 1, 2016. So employers have about little time to prepare.

#### "HOW WILL I GET THE WORK DONE?"

#### EMPLOYER QUESTIONS:

The big question that employer will need to decide with exempt employees making below the minimum salary is whether to raise their salaries or to convert them to non-exempt. Among a much longer list, here are eight questions that every employer should ask itself in making that business decision.

- How will I get the work done? Exempt employees can work anywhere and anytime. And, most do. If you need that kind of flexibility, that may argue in favor of increasing salary rather than converting to non-exempt.
- How do I allow an employee I convert from exempt to non-exempt to work remotely without ending up with an off the clock case? Even if you don't need an employee to perform substantial work remotely or you cannot afford the minimum salary increase, the now non-exempt

employee still likely will need to perform some work remotely. We need to deal with it by developing guard rails to limit, capture and pay for all such work. The on-off switch with regard to remote work may need to become a dimmer.

- How are similarly situated employees being treated? Converting employees from exempt to non-exempt will produce different reactions. Some may be thrilled—the potential for overtime. Others may be less happy—they see it as a demotion. Make sure you have business reasons for whom you convert to non-exempt and document same to defend potential discrimination claims by those who are upset, one way or the other.
- How are you going to communicate with employees whom you are converting from exempt to non-exempt? This is critical. As just noted, some will see this as a demotion. You need to explain that the change is driven by legal considerations and nothing changes the value you place on what the employee does for you.
- How are you going to ensure that exempt employees don't get killed as you move work from the newly converted non-exempt to them to avoid paying overtime? Many exempt employees making well above the minimum salary work day and night. There is a breaking point. Provide them with even more work and, at a minimum, this may produce resentment. If they become sufficiently unengaged or enraged, they may leave. Yes, Virginia, millennial employees are not the only ones who want a life, too.
- What do you do with employees who are above the minimum salary when you raise the salaries of others below it so they remain non-exempt? Raising the salaries of higher paid employees may be costly. But not raising their salaries may have a heavy employee relations cost. "So he gets a \$4,000 raise and makes only \$1,000 less than I do even though I have been here for 5 more years with great reviews." A lot of tough calls will have to be made. And, remember, it is not "all or nothing." Be creative.
- How do you train your managers on how to deal with those converted from exempt to non-exempt? The question provides the answer. Don't forget the training. If you ask the now non-exempt employee to do something as she is walking out the door, tell her to log back in and pay her for the extra time. It is a little more complicated legally but you get the drift, I hope.
- How do I budget? Plan for more overtime as a result of conversions, unless you want to have unhappy or lose customers or clients. Educate your financial team of the new normal so that they can be partners and not impediments.

And, that's just for starters. Having fun, yet?. [PE]



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

#### Training & Education Rules?

**Q:** “We have questions regarding the rules governing training and education time and to learn when we must compensate employees for time and for related course expenses. For example, are training and education time “hours worked”?”

**A:** Training courses are “hours worked” if the employee can reasonably infer from the employer’s conduct that his or her employment would be adversely affected by failing to attend the training.

If the training time is hours worked, an employer must pay wages to the employee for his or her time in attendance and also must pay for the cost of the course. Many employers believe that only “required” courses fall into this category. This is not true. Employers must pay for many training and education courses.

Just because a course is labeled as “voluntary,” for example, does not excuse an employer from paying wages if the training is related to the employee’s job. The key isn’t the type of course but whether the employee is led to believe that nonattendance could affect his or her job.

#### Not All Education Courses are “Hours Worked”

Thankfully, even California law has some limits. Courses that an employer does not have to pay for include:

- Courses completed prior to employment. However, once a company hires an employee, any ongoing courses the employee takes to maintain a certificate that the employer requires for the position must be paid by the employer.
- Courses taken in an effort to obtain a different position within the company, such as a promotion or a job in a different department.
- Courses taken to obtain or maintain a professional license that the government or a regulatory agency grants to the employee as an individual, such as a nursing license or license to practice law.

Employers must pay for both time and expenses. For attendance at courses that are “hours worked,” employers must accurately record and pay for all of the time spent, including time spent studying, as well as all of the expenses incurred. This may include travel time and mileage to the training course and costs.

Employers must also consider how they will make the necessary payments associated with training time. The most practical and least risky approach is simply to pay for the time and expenses as any other work time or expense occurred. Some employers have a policy allowing for a bank of education hours; some allow for tuition reimbursement and others offer education loans. Employers should seek guidance before implementing these types of programs, though, because they can present wage-hour risks. [PE]

## No-Cost Employment Seminars

Pacific Employers hosts this Seminar Series at the Builders Exchange at 1223 S. Lovers Lane at Tulare Avenue, Visalia, CA. RSVP to Pacific Employers at 733-4256. *These mid-morning seminars include refreshments and handouts.*

### 2016 Seminars

There is No Seminar in August or December

♦ **Forms & Posters** - and Contracts, Signs, Handouts, Fliers - Just what paperwork does an Employer need?

**Thursday, September 15<sup>th</sup>, 2016, 10 - 11:30am**

♦ **Guest Speaker Seminar** - Annually we bring you a speaker for a timely discussion of labor relations, HR and safety issues of interest to the employer.

**Thursday, October 20<sup>th</sup>, 2016, 10 - 11:30am**

♦ **Discipline & Termination** - The steps to take before termination. Managing a progressive correction, punishment and termination program.

**Thursday, November 17<sup>th</sup>, 2016, 10 - 11:30am**

## Sexual Harassment Prevention Training

The Visalia Chamber of Commerce and Pacific Employers, will host a state mandated Supervisors’ Sexual Harassment Prevention Training Seminar & Workshop with a continental breakfast on October 26<sup>th</sup>, registration at 7:30 am, Seminar 8:00-10:00 am, at the Lamp Litr Inn, Visalia.

RSVP Visalia Chamber - 734-5876  
PE & Chamber Members \$35  
Non-members \$50

Certificate – Forms – Guides – Full Breakfast



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*That’s right!* When a business that you recommend joins Pacific Employers, we treat you to dinner for two at the *Vintage Press.*  
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### AWARD OF \$7,658,500 IN FARM LABOR CASE

**A federal judge has ordered farm labor contractor Global Horizons, Inc. to pay \$7,658,500 for allegedly subjecting 62 Thai farmworkers in the state of Washington to discrimination and harassment, in violation of federal anti-discrimination laws.** Senior U.S. District Court Judge Edward F. Shea found that Global's discriminatory practices were "reprehensible."

As part of the \$7,658,500 in compensatory and punitive damages, Judge Shea ordered an enhanced award of \$2,500 to each Thai farmworker who was detained by the police because Global confiscated his or her passport. To the Thai farmworker struck on the head with cane by a Global supervisor pushing him to work faster, Judge Shea awarded additional punitive damages of \$16,000 for each month he worked under such abuse.

Judge Shea ordered punitive damages based on a specific finding that Global's discriminatory conduct was "clearly and convincingly" "malicious and with reckless disregard" of these farmworkers' "federally protected rights ... health and safety, ethnicity, and financial vulnerability." [PE]

### \$1 MILLION TO SETTLE EEOC RACE DISCRIMINATION

**A large bakery will pay \$1,042,000 as part of the settlement of a class action race and national origin discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC).**

The EEOC had charged that Lawler Foods, Inc. and Lawler Foods, Ltd. discriminated against three applicants and a class of African-American and non-Hispanic applicants by failing to hire them into entry-level jobs at Lawler's Humble, Texas-area facility allegedly because of their race. Such alleged conduct violates Title VII of the Civil Rights Act of 1964, which prohibits discrimination because of race and national origin.

The EEOC filed the lawsuit after first attempting to reach a pre-litigation settlement through its statutory conciliation process. In the lawsuit, EEOC alleged that Lawler had violated Title VII by engaging in a pattern or practice

of intentionally failing to hire black and other non-Hispanic applicants for jobs, and by using hiring practices, including word-of-mouth recruiting and advertising a Spanish-language preference, that had an adverse disparate impact on black and other non-Hispanic applicants without any business justification. [PE]

### \$1M TO STUDY PAID-LEAVE PROGRAMS

**The U.S. Department of Labor (DOL) announced that \$1 million will be available to research and analyze how paid-leave programs can be developed and implemented across the country.** Greater access to paid leave is a priority for the Obama administration.

A number of state and local governments have adopted or are now considering paid-leave legislation. This grant program will enable similar actions in other jurisdictions. The DOL's Women's Bureau will administer the funding opportunity. This is the third year of funding, building upon the 2014 and 2015 grant programs, through which the bureau awarded over \$2 million to support paid-leave studies.. [PE]

### \$140k FOR ALLEGED TRANSGENDER DISCRIMINATION

**Ellucian, a higher education technology services company with operations in Minnesota, has agreed to pay \$140,000 and provide significant non-monetary relief to resolve a finding of discrimination by the U.S. Equal Employment Opportunity Commission (EEOC).**

According to the EEOC, Ellucian barred the employee from access to her workplace on a college campus the day after she informed her co-workers she planned to transition from male to female.

The college asked Ellucian, which was performing contracted informational technology work for the college, to remove the employee from their campus, and Ellucian complied with the college's request. [PE]