Pacific Employers
MANAGEMENT ADVISOR
Over 50 Years of Excellence!
May 2016

WHAT'S NEWS!

Governor Raises Minimum Wage!

California Governor Edmund G. Brown Jr. has announced a landmark agreement that makes California the first state in the nation to commit to raising the minimum wage to $15 per hour statewide.

This law will also impact the salary exemption rates for many occupations. Employees who are exempt from wage and hour laws, such as meal periods and overtime, must meet the salary exemption test of twice the minimum wage.

Senate Bill 3 raises the minimum wage of $10.00 to $10.50 per hour on January 1, 2017, for businesses with 26 or more employees, and then rises each year until reaching $15 per hour in 2022. This plan recognizes the contributions of small businesses—those with 25 or fewer employees—to California's economy by allowing them a one-year delay on the increases.

Off-Ramp Provisions

The Governor can choose to pause any scheduled increase for one year if either economy or budget conditions are met (a forecast budget deficit (of more than one percent of annual revenue) or poor economic conditions (negative job growth and retail sales). The increase to $10.50/hour is not subject to off-ramps. Initial determination of Governor by August 1 of each year prior to a January increase. The Governor makes the final determination by September 1.

Scheduled Wage Increases (If No Increases Are Paused)

	26 Employees or More	25 Employees or Less
$10.50/hour	January 1, 2017	January 1, 2018
$11/hour	January 1, 2018	January 1, 2019
$12/hour	January 1, 2019	January 1, 2020
$13/hour	January 1, 2020	January 1, 2021
$14/hour	January 1, 2021	January 1, 2022
$15/hour	January 1, 2022	January 1, 2023

1. Economy

Governor has the ability to pause an increase if seasonally adjusted statewide job growth for either the prior 3 or 6 months is negative and retail sales receipts for the prior 12 months is negative.

2. Budget

Governor has the ability to pause an increase if any year from the current budget year to two additional years is forecasted to be in deficit when including the next scheduled increase. Pursuant to Proposition 2, a multiyear forecast is adopted as part of the annual Budget Act. A deficit is if the operating reserve is projected to be negative by more than 1 percent of annual revenues, currently about $1.2 billion. The budget off-ramp can only be used twice.

Indexing

Index annually for inflation (national CPI) beginning the first January 1 after small businesses are at $15/hour. Floor of 0 percent (no decreases) and a ceiling of 3.5 percent. Off-ramps do not apply once the state gets to $15/hour.

IHSS Sick Days

Implementation of one sick day in July 2018. Second day added in the first July following $13/hour implementation for larger businesses, and third day added following $15/hour implementation. [PE]

Updated Harassment Policy Enclosed!

President's Report
~Dave Miller~

Harassment Policy

With the update of the Fair Employment and Housing Act (FEHA) regulations by the California Department of Fair Employment and Housing (DFEH) we have updated our Harassment Policy that is part of every handbook that our clients receive.

The policy is about 50% longer than before, reflecting the increase in directives from the State regarding what is now mandatory language in such a policy. It also reflects the increased responsibilities and the increased number of employees now subject to the harassment regulations.

Job applicants, employees and unpaid interns are protected from discrimination and harassment. Volunteers and people providing services under a contract are also protected from harassment. You must take steps to prevent harassment of your workers by supervisors, managers, co-workers and third parties who your workers come into contact with. A company may be responsible for the acts of non-employees if they harass its employees, and the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. [PE]

An Updated Harassment Policy is enclosed.

Paid Family Leave Expansion!

Governor Jerry Brown signed legislation that will increase the wage replacement rate under the Paid Family Leave program for California workers from its current level of 55 percent to 60 or 70 percent (depending on the worker's income).

Assembly Bill No. 908 revises the formula used to determine benefits available to workers pursuant to the state unemployment compensation disability law and the family temporary disability insurance program.

As of 2018, the bill will also eliminate the seven-day waiting period for receiving temporary disability benefits.

Currently, California unemployment compensation disability law provides a formula for determining benefits available to disabled workers.

According to the law, the weekly benefit for an individual who has quarterly base wages of greater than $1,749.20 is calculated by multiplying his or her base wages by 55 percent and dividing the result by 13. *California bases disability payments on a worker's highest-earning quarter during a roughly one-year "base period."* [PE]

"The shallow consider liberty a release from all law, from every constraint. The wise see in it, on the contrary, the potent Law of Laws." -- Walt Whitman (1819-1892)

Recent Developments

New Discrimination & Harassment Rules

Big changes are required for California employers as the California Department of Fair Employment and Housing (DFEH) have revised the Fair Employment and Housing Act (FEHA) regulations to encompass more employees.

A Highlight of the Changes:

1. All employers with 5 or more employees are required to have a written anti-harassment, discrimination and retaliation policy which they must give to all employees.

2. Policies must prohibit unlawful harassment, discrimination and retaliation; contain a complaint process that allows employees to lodge a complaint to someone other than a direct supervisor; must state that confidentiality will be maintained throughout the complaint investigation to the extent possible; list all protected groups under the FEHA; tell supervisors to report all complaints to a company representative; and specify that anyone who complains of violations will not suffer retaliation.

"Addition and definition of new protected classes . . ."

3. If more than 10% of the employees in a given location "speak" a language other than English, employers must translate the policy into those languages.

4. Addition and definition of new protected classes of gender expression (a person's gender-related appearance or behavior, whether or not associated with the person's sex at birth), gender identity (a person's identification as male, female, a gender different from the person's sex at birth, or transgender), sex stereotype (an assumption about a person's appearance or behavior, or ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the individual's sex), and transgender (a term that refers to a person whose gender identity differs from the person's sex at birth).

5. Unpaid interns, volunteers and independent contractors are protected by the FEHA.

6. Transgender persons are now included as an eligible female employee disabled by pregnancy.

7. Employers may not discriminate against an applicant or employee because he or she holds or presents a driver's license that can be issued to undocumented persons.

8. Notice A about employees' FEHA rights and obligations regarding pregnancy, childbirth, or related medical conditions has been changed (see #3 below).

Employer Checklist:

- If you don't have a written policy, you will need to develop one.
- If you have a written policy, ensure it includes all of the required elements listed above.
- Poster Change: The new regulations change the language in the current pregnancy disability leave poster "Your Rights and Obligations as a Pregnant Employee."

Employers may download and print out the amended posting from our website. [PE]

Uber Drivers Settle With Ride-Hailing Company

Uber Technologies Inc. has warded off a serious legal threat to its highflying business model with a settlement that may end the debate over whether its drivers should be counted as independent contractors or employees.

The ride-hailing company said Thursday it has settled two closely watched class-action labor disputes covering 385,000 drivers in California and Massachusetts that will let Uber continue classifying drivers as contractors.

"Uber agreed to pay up to $100 million . ."

Under the terms of the settlement, Uber agreed to pay up to $100 million to these drivers in two states and revise its practice of deactivating drivers from the popular app without much warning or recourse. The company will also have to explain its decisions to terminate drivers, and in most cases must give warnings before removing drivers from the service. Drivers will also be allowed to post signs in their cars soliciting tips from riders.

The agreement, which must be approved by U.S. District Judge Edward Chen, would spare the company from a jury trial in San Francisco that had been set for June.

For a company that has raised more than $10 billion in debt and equity, the payment is a small concession relative to the larger triumph of preserving the high-margin business of connecting passengers to freelance drivers. Losing these cases at trial could have forced the company to reclassify drivers as employees, leading to potentially billions of dollars in additional costs, such as health benefits and auto expenses, and jeopardizing its long-term prospects for profitability.

The settlement, if approved, doesn't set a legal precedent and leaves the status of contract workers unclear. But it may deter similar lawsuits against the growing number of on-demand services that depend on a pool of freelance workers who clean houses, run errands and perform other menial tasks. [PE]

Bill to Allow Unionizing of Freelancers Withdrawn

A proposal to allow Uber drivers and all other independent contractors in California to unionize is being withdrawn. Assemblywoman Lorena Gonzalez said Thursday that she used AB1727 to draw attention to workers who cannot negotiate their pay or working conditions.

"Uber agreed to pay up to $100 million . ."

Federal law does not extend collective bargaining rights to independent contractors like architects, masseuses or workers dispatched through mobile applications like Uber and Lyft. The San Diego Democrat and union supporter says those workers deserve the benefits that come with being classified as regular employees.

Thirty-two state and national business organizations opposed the bill. They argue the broad proposal would hurt businesses and jeopardize the use of independent contractors. Gonzalez says it won't pass this year and she'll make changes before trying again. [PE]

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 July 27th, registration at 7:30 am, Seminar 8:00-10:00 am, at the Lamp Liter Inn, Visalia.

RSVP Visalia Chamber - 734-5876
PE & Chamber Members $35 - Non-members $50
Certificate – Forms – Guides – Full Breakfast
Future 2016 Training date: Oct. 26th

Human Resources Question with Candice Weaver

The Month's Best Question

Have A Seat?

Q: "The State Supreme Court has finally decided the *Kilby/Henderson* case on "Suitable Seating." What does it mean to employers?"

A: The California Supreme Court ruling on a California Wage Order requirement that employers provide "suitable seats" for employees when the "nature of the work reasonably permits the use of seats." The consolidated decision says employers have to provide seating where employee tasks performed at a particular location reasonably permit sitting, and where providing a seat would not interfere with the performance of standing tasks.

The Court addressed the undefined terms:

First, it held that the "nature of the work" refers to tasks performed at a given location for which a right to a suitable seat is claimed. In rejecting both an "all-or-nothing approach" and a "single task" approach that would be "too narrow," it said trial courts should look to the "actual tasks performed, or reasonably expected to be performed," rather than "abstract characterizations, job titles, or descriptions that may or may not reflect the actual work performed."

Second, the Cal Supremes concluded that whether the nature of the work "reasonably permits" sitting is determined objectively based on the "totality of the circumstances." An employer's business judgment, the physical layout of the workplace, and the "feasibility" of providing seats—including "whether providing a seat would unduly interfere with other standing tasks, whether the frequency of transition from sitting to standing may interfere with the work, or whether seated work would impact the quality and effectiveness of overall job performance"—all should be considered. The court did caution that whether an employer would "unreasonably design a workspace" to deny a seat that might otherwise be reasonably suited for certain tasks also should be considered.

Third, the court effectively suggested that what would be "suitable seating" depends, by ruling that "an employer seeking to be excused from the requirement bears the burden of showing compliance is infeasible because no suitable seating exists."

What it means is that employers must make an inquiry focusing on each particular location where an employee works, as opposed to generally analyzing an employee's entire set of job tasks. And while the California Supreme Court validated the employer's position that "business judgment" and store layouts must be considered, those factors are relevant, but may not be conclusive or correct.

So it's all clear: "the nature of the work" depends on any individual employee's actual work, whether it "reasonably permits" sitting depends on a totality of work factors, and what constitutes "suitable seating" depends on what is infeasible in a particular workplace.

It looks like a matter that will continue to be litigated on a grand scale for years to come. [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

♦ **Family Leave -** Fed & CA Family Medical Leave, California's Pregnancy Leave, Disability Leave, Sick Leave, Workers' Comp, etc.; Making sense of them.

Thursday, May 19th, 2016, 10 - 11:30am

♦ **Wage & Hour and Exempt Status -** Overtime, wage considerations and exemptions.

Thursday, June 16th, 2016, 10 - 11:30am

♦ **Hiring & Maintaining "At-Will" -** Planning to hire? Putting to work? We discuss maintaining "At-Will" to protect you from the "For-Cause" Trap!

Thursday, July 21st, 2016, 10 - 11:30am

There is No Seminar in August or December

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

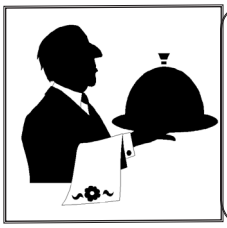
Thursday, September 15th, 2016, 10 - 11:30am

♦ **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 20th, 2016, 10 - 11:30am

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

Thursday, November 17th, 2016, 10 - 11:30am



Dinner for 2 at the *Vintage Press!*
That's right! When a business that you recommend joins Pacific Employers, we treat you to dinner for two at the *Vintage Press.*
Call 733-4256 or 1-800-331-2592.

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Articles in this Newsletter have been extracted from a variety of technical sources and are presented solely as matters of general interest to employers. They are not intended to serve as legal opinions, and should not be deemed a substitute for the advice of proper counsel in appropriate situations.

San Francisco passes Paid Parental Leave Law

The City of San Francisco is the first in the nation to require employers to pay for parental leave. In 2004, California became the first state to create a family leave insurance program that provides partial wage replacement of 55% of weekly wages up to a cap of $1,129 for employees on leave for family care giving or bonding with a new child. The State of New York recently passed a similar law.

Now, San Francisco will require employers to "top up" the Paid Family Leave benefits for up to six weeks by paying supplemental compensation consisting of the difference between the state-provided benefits and an employee's full pay for new-child bonding.

The new law takes effect on January 1, 2017, for employers with 50 or more employees and on July 1, 2017, for employers with 20 or more employees, regardless of location. [PE]

EEOC Sues for Requiring Medical Information!

Grisham Farm Products, Inc. of Mountain Grove, Mo., violated federal law by requiring all job applicants to fill out a three-page health history before they would be considered for a job, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed today.

EEOC also alleged Grisham Farm Products does not maintain or retain employment records and applications for employment, as required by law.

According to EEOC's lawsuit, Phillip Sullivan, a retired law enforcement officer who sought employment with Grisham Farm Products, was told by the company that if he did not fully complete and submit a three-page health history form with his application, he would not be considered for any job.

Because the pre-employment form requested information that could cause an applicant to identify himself or herself as a person with a disability, its use violated Title I of the Americans with Disabilities Act (ADA), EEOC said. The suit further claimed the form does not comply with the Genetic Information Nondiscrimination Act (GINA), which prohibits employers from requesting or requiring genetic information, including medical histories, regarding applicants or their family members, except in limited circumstances allowed by statute. [PE]

$2.1 M to Settle Class Sex Discrimination Claim

Mavis, a tire retailer based in the New York metropolitan area, will pay $2.1 million and provide other relief to settle a class sex discrimination lawsuit by the U.S. Equal Employment Opportunity Commission (EEOC).

According to the EEOC's lawsuit, Mavis engaged in a pattern or practice of sex discrimination by refusing to hire women for its field positions - managers, assistant managers, mechanics, and tire technicians - in the company's over 140 stores throughout Connecticut, Massachusetts, New York, and Pennsylvania.

The EEOC also charged that Mavis failed to make, keep, and preserve employment records. The consent decree settling the suit, entered by Judge Katherine P. Failla on March 24, 2016, provides that Mavis will pay $2.1 million, to be divided among 46 aggrieved women. Also, the decree provides for extensive safeguards to prevent future discrimination by implementing hiring goals for women, a comprehensive recruitment and hiring protocol, and anti-discrimination policies and training. [PE]

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