

WHAT'S NEWS!

MINIMUM WAGE INCREASE AHEAD!

California Governor Jerry Brown signed a minimum-wage hike that raises the hourly rate to \$10 an hour within three years.

The minimum wage, which is currently at \$8 an hour, will rise to \$9 an hour on July 1, 2014. On January 1, 2016, it will rise to \$10 an hour. California's minimum wage will be one of the highest rates in the U.S.

The California bill does not index the rate to inflation, meaning it would remain at \$10 per hour unless the Legislature raises it again in the future. The increase is the first to California's minimum wage in six years.

The state Senate approved AB10 on a 26-11 vote Sept. 12, and the Assembly followed hours later on a 51-25 vote. Both chambers voted largely along party lines.

In opposing the measure, Republican lawmakers said increased wages would encourage businesses to cut jobs and automate.

The California Chamber of Commerce was against the bill, saying it will drive up businesses' costs by ratcheting up other wages and workers' compensation payments.

Federal law sets a minimum wage of \$7.25 per hour, but California is among 19 states and the District of Columbia that set a higher state minimum wage.

Among states, Washington has the top minimum wage at \$9.19 an hour, an amount pegged to rise with inflation. But some cities have set higher rates, including San Francisco, which has the nation's highest minimum wage at \$10.50 an hour. [PE]

Domestic Worker Bill of Rights

Governor Jerry Brown signed AB 241, the Domestic Worker Bill of Rights, into law.

This bill enacts the Domestic Worker Bill of Rights to regulate the hours of certain domestic work employees and provide an overtime compensation rate of one and one-half times the regular rate of pay to those employees who work more than nine hours in any workday or more than 45 hours in any workweek.

The bill defines domestic work employee as anyone who provides services related to the care of persons in private households, or the maintenance of private households or their premises, including childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids, and other household occupations.

Specifically excluded are individuals who care for persons in facilities providing board or lodging in addition to medical, nursing, convalescent, aged, or child care, including, but not limited to, residential care facilities for the elderly. [PE]

Employee Attendance Form Enclosed!

President's Report

~Dave Miller~

Exempt Employee Salaries

The CA minimum wage increase next July 1st may result in a 12.9% salary increase for many exempt employees.

As noted in the article above, effective July 1, 2014, the California minimum wage will increase from \$8 to \$9 per hour pursuant to AB 10. It will increase again to \$10 per hour effective January 1, 2016. We also expect that, not to be out done, those municipalities with "Living Wage" Ordinances will likewise be boosting their rates and may not wait for July 1, 2014 to do so. All of that is something to monitor.

The thing to be a little careful about now is planning for the salary level of your lower level exempt employees in 2014 and the Federal FLSA salary minimum is inadequate to preserve exempt status in the Golden State.

In, California, exempt employees generally must earn a minimum monthly salary of no less than two times the state minimum wage for full-time employment. In recent years, and through June 30, 2014,



\$2,773.³³³ per month which annualizes to \$33,280 is the minimum exempt employee salary.

On July 1, 2014, the minimum monthly salary to preserve exempt status under Labor Code 515 will rise to \$3,120 per month, annualized at \$37,440.

Many businesses perform annual salary adjustments driven by either an evaluation year or an employee anniversary date year.

Increasing the annual salary to \$37,440 on or slightly before January 1, 2014 would be sufficient but it is also more than required. Increasing the salary to at least \$3,120 when the change becomes effective is also essential but the timing can be set to coincide with the AB 10 minimum wage increase.

The next increase, on January 1, 2016 is not so much of a mid-year problem, but another substantial increase of salary exempt employees to \$41,600 on an annual basis or \$3,466.⁶⁷ per month. [PE]

*It is unpatriotic not to tell the truth,
whether about the president or anyone else.
--Theodore Roosevelt*

Pacific Employers

Recent Developments

Health Care Reform –

What You Need To Know For 2014

While the implementation of the employer mandate and reporting requirements of the Affordable Care Act (“ACA”) – originally scheduled to become effective on January 1, 2014 – have been delayed to 2015, a number of provisions were not affected by the delay and are still scheduled to take effect in 2014.

EFFECTIVE FOR ALL PLAN YEARS BEGINNING ON OR AFTER JANUARY 1, 2014

No Exclusion of Adult Children - Grandfathered plans will no longer be permitted to exclude adult children over 18 but under 26, even if they have access to other employer-sponsored health care coverage.

Pre-existing Conditions - Group health plans will no longer be able to deny coverage to any individuals on the basis of pre-existing conditions.

Waiting Periods Limited - Group health plans may not apply waiting periods that exceed 90 days to newly eligible employees. California law limits waiting periods to 60 days.

Updated COBRA Notice - Employers need to update COBRA Election Notices to include notice of the new health insurance exchanges/marketplaces (“Marketplace”). The Department of Labor has issued an updated model COBRA Election Notice to facilitate employers’ compliance with this notice requirement.

New Wellness Incentive Rules - The Health Insurance Portability and Accountability Act (“HIPAA”) generally prohibits group health plans and insurers from discriminating against individual participants and beneficiaries with respect to eligibility, benefits, or premiums based on a health factor. However, HIPAA provides an exception to this general prohibition that permits group health plans to offer wellness programs providing rewards if the incentive does not exceed 20% of the cost of individual health care coverage. The ACA modified the HIPAA nondiscrimination and wellness program provisions, such that employers may now offer covered wellness program incentives of up to 30% of the total cost of coverage and up to 50% for programs designed to prevent or reduce tobacco use.

Transitional Reinsurance Fees - Self-insured group health plans and health insurance issuers must contribute to the transitional Reinsurance Program, which will be in place from 2014 to 2016 and is intended to help stabilize premiums for coverage of high risk individuals in the individual market. The amount of the transitional reinsurance fee for 2014 will be \$63 annually (or \$5.25 per month) per covered life.

Annual Dollar Limits - Group health plans may not impose annual dollar limits on any coverage of essential health benefits. Essential health benefits include ambulatory care, emergency services, hospitalization, maternity and newborn care; mental health and substance use disorder services; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including dental and vision care.

Coverage of Clinical Trials - Non-grandfathered group health plans and insurers are now required to provide coverage to qualified individuals participating in approved clinical trials and are prohibited from denying coverage or otherwise discriminating as to coverage on the basis of participation in a clinical trial.

ACA ONGOING REQUIREMENTS

Marketplace Notices - With open enrollment in the Marketplace beginning in October 2013 for coverage beginning as early as January 1, 2014, employers should have provided all current employees with Marketplace Notices by October 1, 2013. Going forward, employers must provide all new hires with the

Marketplace Notice within 14 days of their start dates.

W-2 Informational Reporting - Employers required to file 250 or more W-2 Forms are already required to report the cost of coverage under an employer-sponsored group health plan on an employee’s Form W-2. Employers filing fewer than 250 W-2s, multi-employer plans, health reimbursement arrangements, dental and vision plans, and certain plans not subject to COBRA continuation coverage requirements, are still not required to comply with this informational reporting requirement. [PE]

CA Extends Time on PW Violation

Governor Jerry Brown has signed into law a bill that extends the deadline to serve a prevailing wage penalty assessment on employers.

AB 1336 amends the California Labor Code, extending the 180-day prevailing wage assessment deadline to not later than 18 months from completion of the project or acceptance of the public work, whichever occurs last.

California prevailing wage obligations are imposed on any employer that contracts with public entities to provide services or construction work in excess of \$1,000. California prevailing wage law requires employers to maintain (and make available for inspection) certified, accurate payroll records for public work projects that contain specific employee information and itemized pay information.

Penalties for failing to pay prevailing wages or overtime on public work projects in California start at \$40 per day per employee. If the employer has been subject to a penalty within three years, penalties increase to \$80 per day per employee. If an employer willfully fails to pay the prevailing wage, it is a misdemeanor and penalties soar to \$120 per day per employee.

Missed “Recovery Periods”

Governor Jerry Brown has signed SB 435 which expands the one hour pay penalty in Labor Code 226.7 to missed “recovery periods”

Labor Code 226.7 provides that an employee should receive one hour of pay as a penalty for not receiving rest or meal periods in accordance with California law. SB 435 expands the one hour of pay penalty to missed “recovery periods.”

SB 435 defines “Recovery Period” as “a cool down period afforded an employee to prevent heat illness.” Employers may consider reviewing the CA OSHA resources for preventing heat illness. For example, when the outdoor temperature exceeds 85 degrees Fahrenheit, CA OSHA mandates a recovery period of not less than 5 minutes for employees who work outside to take a cool-down rest, in the shade, to protect themselves from overheating. The new law will likely lead to an increase in litigation. As a result, employers should review their procedures and policies. [PE]

Sexual Harassment Prevention Training

Visalia Chamber of Commerce and Pacific Employers, will jointly host a state mandated Supervisors’ Sexual Harassment Prevention Training Seminar & Workshop with a continental breakfast on October 23rd, registration at 7:30am Seminar 8:00 to 10:00am, at the Lamp Liter, Visalia.

RSVP Visalia Chamber - 734-5876

**PE & Chamber Members \$35 - Non-members \$50
Certificate – Forms – Guides – Full Breakfast**



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

Challenging FMLA Certification

Q: "Is it possible for an employer to question what looks like an incorrect or incomplete FMLA certification?"

A: Yes, If you find that the certification document is incomplete, you may go back to the employee and tell the employee to go back to the medical practitioner to complete the form. You must give the employee a reasonable amount of time to accomplish this.

CERTIFICATION CLARIFICATION

If something on the certification form is confusing or vague or illegible, with the permission of the employee you may contact the provider; however, the contact may not be by the employee's supervisor or by the person responsible for scheduling leaves of absence.

If the employee refuses or the doctor won't comply, the employee still has the obligation to furnish you with a clarified form.

NOTE: "Clarification" means contacting the employee's healthcare provider in order to understand the handwriting or to understand the meaning of the responses contained within the certification. Employers may not ask healthcare providers for additional information beyond that required by the certification form. The employee's healthcare provider may require the employee's consent for such clarification, and the employee must provide such consent or FMLA leave may be denied.

CERTIFICATION AUTHENTICATION

If you question the authenticity of the document, you may send a note to the practitioner asking, "Was this form generated by your office?"

NOTE: "Authentication" means providing the healthcare provider with a copy of the medical certification and requesting verification that the information contained on the certification form was completed and/or authorized by the healthcare provider who signed the document. No additional medical information may be requested. No consent is required for authentication.

SECOND AND THIRD MEDICAL OPINIONS

If you are concerned about the validity of the medical opinion, you may request that the employee seek a second medical opinion. The employee must cooperate with this request.

NOTE: When the second opinion differs from the first, employers may require the employee to obtain a third opinion, again at the expense of the employer. The healthcare provider for the third opinion should be approved by both the employer and the employee. This third opinion is considered to be final and binding on both the employer and employee. (Second and third opinions are not permitted for recertification.)

SECOND AND THIRD OPINION REPORTS

The employer is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within 5 business days unless extenuating circumstances prevent such action. [PE]



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Call 733-4256 or 1-800-331-2592.

NO-COST EMPLOYMENT SEMINARS

The Tulare-Kings Builders Exchange and Pacific Employers host this Seminar Series at the **Builders Exchange** at 1223 S. Lover's Lane at Tulare Avenue, Visalia, CA. RSVP to Pacific Employers at 733-4256.

These mid-morning seminars include refreshments and handouts.

Last 2013 Seminar

♦ **Discipline & Termination** - The steps to take before termination. Managing a progressive correction, punishment and termination program.
Thursday, November 21st, 2013, 10 - 11:30am

No Seminar in December

2014 Topic Schedule

♦ **Labor Law Update** - The courts and legislature are constantly "Changing the Rules" - Learn about the recent changes to both the California and U.S. laws that affect employers of all types and sizes.
Thursday, January 16th, 2014, 10 - 11:30am

♦ **Employee Policies** - Every employer needs guidelines and rules. We examine planning considerations, what rules to establish and what to omit.
Thursday, February 20th, 2014, 10 - 11:30am

♦ **Equal Employment Fundamentals** - Harassment & Discrimination in the Workplace - The seven (7) requirements that must be met by all employers. "The Protected Classes."
Thursday, March 20th, 2014, 10 - 11:30am

♦ **Safety Programs** - Understanding Cal/OSHA's Written Safety Program. Reviewing the IIPP or SB 198 requirements for your business.
Thursday, April 17th, 2014, 10 - 11:30am

♦ **Family Leave** - Federal & California Family Medical Leave, California's Pregnancy Leave, Disability Leave, Sick Leave, Workers' Compensation, etc.; Making sense of them.
Thursday, May 15th, 2014, 10 - 11:30am

♦ **Wage & Hour and Exempt Status** - Overtime, wage considerations and exemptions.
Thursday, June 19th, 2014, 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 17th, 2014, 10 - 11:30am

There is No Seminar in August

♦ **Forms & Posters** - as well as Contracts, Signs, Handouts, Fliers - Just what paperwork does an Employer need?
Thursday, September 18th, 2014, 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 16th, 2014, 10 - 11:30am

♦ **Discipline & Termination** - The steps to take before termination. Managing a progressive correction, punishment and termination program.
Thursday, November 20th, 2014, 10 - 11:30am

There is No Seminar in December

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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.

A Ban On Banning Emergency Medical Services

A California employer may not prohibit an employee from providing voluntary emergency medical services, such as CPR, in response to a medical emergency, according to a law approved by the Governor.

The law has a few caveats. An employer may have a policy authorizing trained employees to provide those services but, even with such a policy, any available employee may voluntarily provide those services if a trained and authorized employee is not "immediately available" or is otherwise unable or unwilling to do so.

Also, an employer may prohibit an employee from performing emergency medical services on a person who has expressed the desire to forgo resuscitation or other medical intervention through any legally recognized means such as an advance health care directive or legally recognized health care decision-maker.

The law notes specifically that it does not impose any duty on an employer to train employees regarding emergency medical services or CPR. [PE]

Workers' Comp Fraud

A Southern California woman has been arrested for keeping her dead husband's memory alive by cashing some \$500,000 in workers' comp insurance payments that were sent long after he was six feet in the ground.

Rosa Maria Barajas, 68, is charged with two felony counts of insurance fraud, the California Department of Insurance says.

New York Life contacted the California Department of Insurance in January to claim that Ms. Barajas was continuing to collect on her deceased husband's workers' compensation settlement -- monthly payments of over \$18,000 that were supposed to continue only while Jesus Barajas was alive, as ordered by the Workers' Compensation Appeals Board in September 2000.

As part of the agreement Ms. Barajas was directed to notify New York Life in the event of the demise of her husband, but according to the investigators she failed to do so when Mr. Barajas died in May 2010.

Jesus Barajas suffered an industrial accident in October 1997 when he fell from a scaffold while working for Aramark Uniform Services.

If convicted, Ms. Barajas faces up to five years in state prison and a fine in excess of \$500,000. [PE]

Arbitration Valid Without Rules Attached

An arbitration agreement was not procedurally unconscionable because the employer failed to attach a copy of the relevant arbitration rules to the agreement, the California Court of Appeal has ruled. *Peng v. First Republic Bank*.

The Court also ruled that the agreement was not substantively unconscionable because it provided that the employer may unilaterally modify the agreement. The Court reversed the trial court's order denying the employer's request for arbitration of the employee's discrimination and wrongful termination claims. [PE]

Damages When Complaints Ignored

A female construction worker who repeatedly complained about inadequate and unclean toilet facilities, and whose complaints were not addressed or remedied by her employer, could pursue her claim for punitive damages under the California Fair Employment and Housing Act, the California Court of Appeal has ruled. *Davis v. Kiewit Pacific Co.*

Reversing summary judgment in favor of the employer, the Court ruled that sufficient questions of fact existed regarding whether the project manager on a \$170-million construction project and the employer's equal employment officer were "managing agents" who participated in or ratified the discriminatory conduct, thereby warranting the imposition of punitive damages against the employer. [PE]