

### WHAT'S NEWS!

#### Overtime Rules Blocked!

Employers across the nation had been preparing to increase salary levels for managers to meet the higher salary level requirements implemented by the Department of Labor under the Fair Labor Standards Act (FLSA).

The DOL rules were set to take effect on December 1, 2016, and required employers pay employees that qualify to be exempt executive, administrative or professionals (referred to as the "EAP" exemption) a minimum salary level of at least \$47,476 annually. 21 states filed a lawsuit to prevent the DOL's rule to take effect, arguing that in raising the minimum salary level, the DOL exceeded its delegated authority from Congress. While not issuing a final ruling, the court determined that the plaintiff states have shown a likelihood of success on the merits justifying the preliminary injunction. The merits of the case and a final determination will be made at a later date.

Therefore, the court issued an injunction preventing the DOL's overtime rules from taking effect on December 1, 2016. An issue addressed by the court was whether the injunction applied only to the 21 states involved in this case, or to all states. The court's opinion is unambiguous that the scope of the injunction applies to all states and all employers:

The Court Stated "*A nationwide injunction is proper in this case. The Final Rule is applicable to all states. Consequently, the scope of the alleged irreparable injury extends nationwide. A nationwide injunction protects both employees and employers from being subject to different EAP exemptions based on location.*"

Now employers that started the process of raising salary levels for managers in order to comply with the DOL's overtime rules must make a decision to continue with the raises or hold back on any implementation until there is further guidance from the courts. It is also likely that President-elect Trump's administration will not look favorably on the DOL's overtime rules. This adds further uncertainty about whether the increase in the salary level will ever go into effect once President Elect Trump takes office. [PE]



#### Pacific Employers Goes Facebook and Email!

**BE-mail!** As we take advantage of another way to connect with our clients, in addition to a new platform for our E-mail, we now have a Facebook Page! We plan to bring you the latest information and the answers to many of your questions in an organized and timely fashion with E-mail and 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/>

#### New I-9 Form

**U.S.** Citizenship and Immigration Services (USCIS) has published a revised version of Form I-9, **Employment Eligibility Verification**. Begin to use the new form immediately!

The old Form I-9 that has the revision date of 03/08/13 can be used until January 22, 2017. The new form is only required for new hires or for re-verifying employee's information. It is not required for current employees who completed the old Form I-9 to complete the revised Form I-9. [PE]

### 2017 Minimum Wage Fact Sheet Enclosed!

#### President's Report ~Dave Miller~ Seminar Location Change

**The Builders Exchange has relocated to 823 W. Center Ave., Visalia.**

**The Seminar will be a Labor Law Update!**

Join us Thursday, January 19th, 2017, 10 - 11:30am for a review of the most significant changes and additions to state and local laws in California that will impact employers in 2017.

Discussion will cover a range of topics, including the following:

- California and local minimum wage update
- US DOL overtime salary rules
- Paid sick leave and "kin care" statutes
- Forum selection clauses in employment contracts
- Fair pay laws
- Legalized marijuana

Pacific Employers hosts this Seminar Series at The Builder's Exchange which has relocated to 823 W. Center Ave., Visalia.

RSVP to Pacific Employers at 733-4256. *These mid-morning seminars include refreshments and handouts.* [PE]



#### "All-in-1" Poster for 2017!

**You should have received your 2017 California & Federal "All-in-1" Poster by mail and extra copies are available at our office!**

**REMEMBER,** You're not done when you get the "All-in-1" Poster up. You still need to fill out the Workers' Comp information panel and then make sure you have posted the Industrial Welfare Commission's (IWC) order for your business. Check out the *Find Your Wage Order* box in the lower left corner of the poster for details on your firm's wage order. [PE]

#### Earned Income Tax Credit

**The Annual Earned Income Tax Credit Notification (EITC) season is upon us.** California employers are required to notify their employees about the availability of the State and Federal EITC.

Written notification must be provided to employees in person or by mail. Notification must be provided within one week before or after, or at the same time, that you provide an annual wage summary, including, Form W-2 or Form 1099. See the *Forms Page* or *What's New Page* on the Pacific Employers website for the form. [PE]

You can only protect your liberties in this world by protecting the other man's freedom. You can only be free if I am free.  
Clarence Darrow, lawyer and author (1857-1938)

# Pacific Employers

## Recent Developments

### January 1st Changes

#### The Minimum Wage:

##### California's minimum wage rates:

- 26 Employees or More \$10.50/hour January 1, 2017
- 25 Employees or Less \$10.00/hour January 1, 2017

See the enclosed 2017 Minimum Wage Fact Sheet for information on California's minimum wage program.

#### Physicians-Surgeons O/T Exempt Rate:

- Effective 1/1/17, the hourly rate is \$76.24

#### Computer Professional O/T Exempt Rate:

- Effective 1/1/17 the hourly rate is \$41.85, minimum monthly salary is \$7,265.43, annual salary is \$87,185

### EDD Online Filing

Beginning January 1, 2017, employers with 10 or more employees will be required to electronically submit employment tax returns, wage reports, and payroll tax deposits to the Employment Development Department (EDD).

All remaining employers will be subject to this requirement beginning January 1, 2018. If you are currently required to electronically submit wage reports and/or electronic funds transfer to the EDD, you will remain subject to those requirements. Frequently asked questions are available from the EDD

### IRS Mileage Reimbursement Rate:

1/1/17, the IRS reimbursement rate for business miles driven is reduced by 1/2 cent to 53.5 cents per mile. [PE]

## Legalized Marijuana?

With recreational marijuana now legal in California, many employers are wondering how this impacts their drug free workplace policies and their response to an applicant/employee drug test that is positive for marijuana. Contrary to what many employees likely will believe, the new law does not restrict employers' rights to continue enforcing policies that prohibit marijuana use. The new law expressly states that that it should not be construed or interpreted to:

- restrict the rights and obligations of public and private employers to maintain a drug and alcohol-free workplace;
- require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace;
- affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees; or
- prevent employers from complying with state or federal law.

Under federal law, marijuana remains a Schedule I drug that is prohibited under the Controlled Substances Act, and the California Supreme Court held in 2008 (*Ross v. RagingWire*) that an employer lawfully may enforce a policy of refusing to hire an applicant who tests positive for marijuana -- even if the employee was using the marijuana for medical purposes as permitted under California law.

The expanded legalization of marijuana for recreational use in California does not change the legal analysis.

Because marijuana remains illegal under federal law (and in most states), employers are entitled to continue maintaining policies prohibiting the use of drugs classified as illegal under federal law and to enforce those policies equally as to applicants and employees regardless of whether the applicant/employee is in California.

**"...PROHIBITED DRUG USE EXTENDS TO ALL DRUGS..."**

Employers who wish to maintain such policies should ensure that their policies make clear that prohibited drug use extends to all drugs prohibited by federal law, including marijuana -- even though medical and/or recreational marijuana has been legalized in California.

Multistate employers should also measure their policies against the marijuana-related laws of other specific states (other than California) where they employ workers. [PE]

## Supreme Court Says Employees Cannot Be On-call During Rest Periods

State law prohibits on-duty and on-call rest periods and during required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time, the California Supreme Court just ruled.

The decision addresses the issue of whether employers may require their employees to remain on call? during rest periods.

**"...AWARDING APPROXIMATELY \$90 MILLION..."**

The decision stems from a case in which security guards working for ABM Security Services Inc. sued their employer in Los Angeles over a requirement for guards to keep their pagers and radio phones on -- even during rest periods -- and to remain vigilant and responsive to calls when needs arose, including events that included escorting a building tenant to the parking lot or when a building manager had to be notified of a mechanical problem.

The guards sued ABM, alleging the company failed to provide the rest periods that state law entitles employees to receive. The trial court granted summary judgment for plaintiffs, finding ABM liable and awarding approximately \$90 million, but the Court of Appeal reversed.

"Because state law requires employers to provide their employees with rest periods that are free from duties or employer control, we reverse the Court of Appeal," says the Supreme Court's opinion. "A rest period, in short, must be a period of rest." [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 January 25<sup>th</sup>, 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 2017 Training dates:

April 26th, July 26th, & Oct. 25th



## Human Resources Question with Candice Weaver

### THE MONTH'S BEST QUESTION

#### New Exemption Rules Blocked - Now What?

**Q:** Now that a federal district court judge has issued a nationwide injunction against the new overtime rules that were to go into effect on December 1, 2016, employers are asking “what should we do?”

**A:** Many employers prepared to comply with the new regulations and were ready to roll out new payroll practices. Do they hold off or press forward?

The short answer is that while this injunction is in effect, employers are not required to pay overtime in accordance with the new rules. But, the injunction is only temporary. The next step is for the judge to consider whether to make his ruling permanent. He can do so by vacating the new overtime rules—i.e., rendering the new rules a nullity—as if they had never been issued at all. Such a vacatur seems likely, given his preliminary ruling. While we do not know when the judge will render his final decision in the case, we anticipate that it could be as soon as another month or so. If the judge does vacate the rules, then employers would still not be required to comply with the new regulations.

But what happens if the judge changes his mind and lifts the injunction or if an appellate court overturns his ruling? In that case, are the regulations effective retroactively to December 1, 2016, or would the regulations take effect only prospectively from the date the injunction is lifted or a vacatur is reversed? The answer, unfortunately for employers, is very unclear.

So, where does that leave employers today? Employers must weigh various business and legal risks in deciding whether to comply with the now enjoined overtime regulations. There is a legal risk that if the regulations are later upheld, they may be enforced retroactively. In that event, employers may be liable for overtime payments to employees who were classified as exempt under the current regulations but who are not exempt under the new regulations, plus potential attorneys’ fees. In the event of such a litigation attempting retroactive enforcement of the overtime rule, employers will have difficulty defending against claims if they do not have accurate records of the hours worked by employees. So, an employer that decides to hold off on complying with the new regulations may want to keep accurate records of the hours worked by any employee who is now considered exempt but could be considered non-exempt under the new regulations.

Of course, any appeal of this judge’s ruling will fall to the new Trump administration, which may not be as motivated to enforce these Obama administration regulations. That remains to be seen. In the meantime, employers will have to decide whether to put their compliance plans on hold in light of the ruling. [PE]

## NEW ADDRESS FOR SEMINARS

**Pacific Employers** hosts the Seminar Series at the **Builders Exchange** at The Builder’s Exchange which has relocated to 823 W. Center Ave., Visalia.

RSVP to Pacific Employers at 733-4256. *These mid-morning seminars include refreshments and handouts.*

### 2017 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 19<sup>th</sup>, 2017, 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 16<sup>th</sup>, 2017, 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 16<sup>th</sup>, 2017, 10 - 11:30am**

◆ **Safety Programs** - Understanding Cal/OSHA’s Written Safety Program. Reviewing the IIPP or SB 198 requirements for your business.

**Thursday, April 20<sup>th</sup>, 2017, 10 - 11:30am**

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

**Thursday, May 18<sup>th</sup>, 2017, 10 - 11:30am**

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

**Thursday, June 15<sup>th</sup>, 2017, 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 20<sup>th</sup>, 2017, 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 21<sup>st</sup>, 2017, 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 19<sup>th</sup>, 2017, 10 - 11:30am**

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

**Thursday, November 16<sup>th</sup>, 2017, 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.

2017 Minimum Wage Fact Sheet Enclosed!

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**SEMINAR SERIES NOW AT 823 W. CENTER AVE., VISALIA**

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.

### MAJOR OVERHAUL OF WC WORKED!

**T**he highly respected Workers' Compensation Insurance Rating Bureau, or WCIRB, conducted a comprehensive study of a major overhaul of the system enacted by Gov. Jerry Brown and the Legislature four years ago. And it found that it did what it was supposed to do – cut costs, especially for medical care, to offset higher cash benefits.

In fact, the study found that the savings in the employer-financed system are far greater than the benefit costs, resulting in a \$1.3 billion per year net decrease, rather than the cost/benefit washout that the legislation anticipated.

That's good news for employers, who already pay the nation's highest workers' compensation insurance premiums as a percentage of payroll – nearly twice the national average. But it fuels the perpetual political war over the complex system's provisions.

The current version occurred in 2012 when employers and unions, with insurers' support, forged a deal to raise cash payments to workers with "permanent partial" disabilities, the most expensive payouts, and offset their cost by tightening medical care and eligibility for benefits.

It part, it modified systemic changes that then-Gov. Arnold Schwarzenegger had made, in both legislation and subsequent rule-making, in 2004.

The 2012 deal was opposed by medical providers and lawyers who specialize in workers' compensation cases but was pushed through the Capitol in the dying days of the 2012 session and signed by Brown. [DE]

### FORM 300 RULES

**C**alifornia employers in high hazard industries with 10 or more employees are required to comply with Cal/OSHA's Form 300 recordkeeping standard.

Cal/OSHA's Form 300 is available on our website Forms page in the California Government section at the top of the list and includes the form, instructions and the Summary:

<http://www.pacificemployers.com/forms.htm>

High hazard employers are required to complete both OSHA Form 300 Log of Work-Related Injuries and Illnesses and OSHA Form 300A Summary of Work-Related Injuries and Illnesses, however, only the latter, the Form 300A, is required to be posted in the workplace.

The reason you post only the Summary is that it does not have the privacy related data of the Form 300. You must post the Summary only, not the Log, by February 1st of the year following the year covered by the form and keep it posted until April 30th of that year. [DE]

### PART TIME WORKERS MUST BE OFFERED ADDITIONAL HOURS

**S**an Jose's Opportunity to Work Ordinance which is effective March 2017, requires that part time workers be offered additional hours.

In the recent election, San Jose voters passed a voter initiative creating the "Opportunity to Work" ordinance. The purpose of the ordinance, which will become effective on March 13, 2017, is to promote full-time jobs and to prevent San Jose employers from choosing to employ workers on a part-time basis only as a means of reducing costs of providing health insurance or other benefits.

The ordinance requires San Jose employers to offer hours of work to existing qualified part-time employees before hiring new staff, to keep records of its compliance with the ordinance, and to refrain from retaliation against any employee who exercises rights under the ordinance.

Since 2014, San Francisco has had a similar requirement applicable to formula retail establishments only. [DE]

Want Breaking News by E-Mail?  
Just send a note to  
[peinfo@pacificemployers.com](mailto:peinfo@pacificemployers.com)  
Tell us you want the News by E-Mail!