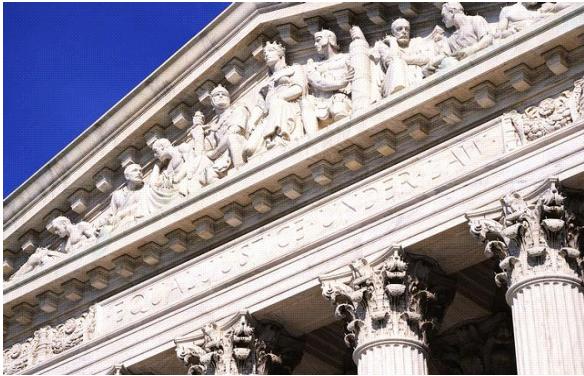


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GET READY TO RING IN THE NEW YEAR: NEW LAWS FOR EMPLOYERS IN 2008

As the new year approaches, employers should be aware that several new obligations may be imposed upon their businesses. Although several proposed laws were vetoed, the following are some of the highly relevant laws which were passed and will become effective in 2008:

Commencing on January 1, 2008

- State Minimum Wage Increase (AB 1835) - passed in 2006, California minimum wage will increase from \$ 7.50 per hour to \$ 8.00. Employers should recognize this increase will result in the following consequences:
 - overtime rate increase
 - White Collar exemption salary requirement increase (\$640/week, \$2,773.33/month, \$33,280/year)
 - Commission Salesperson exemption rate increase (no less than \$12/hr per week)
 - Tool wage rate increase (\$16/hr)
- Hourly Computer Software Exemption Minimum Wage change (SB 929) - the hourly rate that must be paid to satisfy this exemption will change from the current \$49.77 to \$36 per hour.
- IRS Reimbursement Mileage Rate Increase— the standard mileage rate used to reimburse business use of car will be 50.5 cents per mile up from 48.5 cents in 2007.



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**PLEASE NOTE
NEW FIRM NAME
AND CONTACT
INFORMATION**

See Firm's November newsletter for additional new laws taking effect in 2008, available on our website.

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Commencing on July 1, 2008

- Hands Free Cell Phones (SB 1613)- driving in California while talking on a cellular phone will be unlawful unless the driver uses a hands-free device. As a result, employers should consider implementing a policy prohibiting such use while employees drive. A first offense will be fined \$20, and each subsequent offense \$50.
- Federal Minimum Wage Increase—July 1, to \$6.55/ hr.

Effective October 2007

- Leave for Military Spouses (AB 392)- applies to all employers with 25 or more employees, requiring up to 10 days



unpaid leave for *eligible* military spouse employee (at least 20 hours of work a week) while military spouse is home on leave from combat deployment.

Miscellaneous

Over the past year, employers have received an array of information concerning the handling of Social Security Administration (SSA) “No Match” letters. Here is a recap of the history of the no match issue:

- 6/14/06– Dept. of Homeland Security (DHS) published proposed procedures and obligations for employers who received the SSA no match letter.

- 8/15/07– DHS announced final rules for no match letter obligations.
- 8/31/07– Temporary restraining order issued against the DHS and SSA.
- 10/10/07– US District Court issued a preliminary injunction blocking DHS rule.

However, as of November 14, 2007, the SSA announced that it will not issue no-match letters in 2007 for mismatched W-2 forms reporting 2006 income.

Take Away Tip: Employers should evaluate employee exempt status and make needed pay rate changes and timely implement all other required laws. Any classification changes should not occur until effective date of new law.

SURVIVING THE HOLIDAY SEASON

OFFICE SHUTDOWNS AND PAYING EXEMPT EMPLOYEES

In general, as a result of the salary basis rules, a White Collar Exempt employee performing *any amount* of work in a workweek is to be paid for a full workweek. Where absolutely no work is done in a workweek, no pay is required. However, there are several exceptions to the general rule, which permit an employer to dock pay (pay less than the full salary) for certain absences. Where an exempt employee is absent for a **full day** under certain limited circumstances, the weekly salary can be docked. Under certain scenarios, **partial day** absences may result in the ability of the employer to require the employee to use accrued paid benefits in order for employee to be compensated for such absence. Employers cannot dock an exempt employee's pay for any absences during a week that result from jury duty, serving as a witness, or temporary military leaves of absence.

Employers often wonder whether they can require an exempt employee to use vacation benefits to be paid during partial or full week office closings. The DLSE requires advanced “reasonable notice” which is the greater of one fiscal quarter or 90 days. Non-exempt employees need only be paid for hours worked and can be required to use paid benefits during office closings.

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RECOMMENDATIONS FOR REDUCING RISKS ASSOCIATED WITH HOLIDAY PARTIES

Employers hosting events, such as upcoming holiday parties, should be concerned with issues such as sexual harassment, discrimination, liability for acts of employees against third parties, and workers' compensation claims. First and foremost, the party should not be labeled with a reference to a particular religion (*i.e.*, "Christmas") but rather "Holiday Party." All employees should feel comfortable and welcome to attend. Should the event be sponsored such that it allows the employee to bring someone with them, the invitation should not refer to a "spouse" but rather guest.

To help reduce or eliminate some of these potential legal pitfalls, employers should consider eliminating and/or reducing the availability of alcohol at the event. Perhaps a lunch party instead. Utilizing drink tickets or a cash bar can also minimize alcohol consumption. Additionally, hiring professional bartenders who have authority to cut off employees who appear to have had too much, as well as require identification from those who look under the legal age to drink alcohol can assist with the goal.

To establish the right environment, any applicable employee handbook policies should be reviewed that pertain to alcohol and drug use, harassment, discrimination, and other improper conduct. Employees, including supervisors, should be reminded of policies relating to discrimination, harassment and retaliation. For obvious reasons, mistletoe is strongly advised against. Last, but certainly not least, it should be made perfectly clear that attendance at any company sponsored event is purely voluntary.



Take Away Tip: Before docking any exempt employee's paycheck for full and partial day absences, see Exemption Chart located on our website and contact Elizabeth Koumas with any additional questions.

NEW REVISED I-9 FORM ISSUED BY GOVERNMENT

The USCIS (U.S. Citizenship and Immigration Services) issued a new Form I-9 that all employers must complete for new hires to verify eligibility to work in the United States. As of **November 7, 2007**, the new form is the only version that is acceptable to be used.

The new form has a revision date of 6/5/07 in the lower right-hand corner. Previous versions are not acceptable for use. The USCIS, in revising the form, removed five of the previously acceptable documents

from List A, that could be presented by a candidate for employment to establish both proof of identity and eligibility for employment.

The rationale behind removing these documents was due to the fact these documents lacked adequate characteristics to reduce fraud, tampering and counterfeiting. The five documents that have been removed include the following:

- Certificate of Naturalization
- Certificate of U.S. Citizenship
- Alien Registration Receipt Card
- Unexpired Reentry Permit

- Unexpired Refugee Travel Permit

The updated form also added an Unexpired Employment Authorization Document to the List A acceptable documents. Additionally, according to the revised instructions, an employee is no longer required to provide the social security number in Section 1, except under limited circumstances. The new form need not be used for existing employees, except during the re-verification process.

Employers are cautioned that use of the outdated form will subject them to fines and penalties. The USCIS is expected to grant employers a 30-day grace period to make the transition into using the appropriate form.





NEW: EARNED INCOME TAX CREDIT NOTICE REQUIRED BY EMPLOYERS

Assembly Bill 650, effective January 1, 2008, requires all California employers to provide a new notice to all employees, concurrent with the employee's annual wage summaries used for tax purposes, such as W-2 or 1099 forms. The written notice must informed employees of a possible right to obtain an Earned Income Tax Credit on their federal tax returns. To comply with the new law, employers must provide the notice within one week (before or after), or concurrently with the W-2 or 1099 forms, either by hand or mail delivery. Posting the notice will not satisfy an employer's obligation. Further, the notice must contain specific express language to comply with the new law.

Take Away Tip

Before Issuing 2008 Wage Tax Related Summaries: Be sure to obtain the specific language required to be set forth in this new written notice. Contact Elizabeth Koumas if you need the new notice language.

FUTURE SEMINAR

LEARN MORE ABOUT EMPLOYMENT LAW: FROM A TO Z

Elizabeth Koumas, along with another knowledgeable attorney, will present a one day seminar on Employment Law, covering topics from recruiting to termination.

Date: June 24, 2008

Time: 8:30 a.m. to 4:30 p.m.

Location: TBD

Topics Include:

- Human Resource Records and Documents
- Hiring Policies and Practices
- Overview of Family Medical Leaves
- Harassment Training Rules
- Performance, Discipline, Termination and Recommended Documents
- Essential Wage and Hour Practices and Benefits

The seminar will be presented through Lorman Educational Service, with Continuing Education Credits available. For a complete agenda, and for registration information, contact Elizabeth J. Koumas at (619) 398-8301 or ejk@koumaslaw.com.



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