KOUMAS LAW GROUP

Employment Law Update

January 2014

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CALIFORNIA MINIMUM WAGE INCREASE PACKS A POWERFUL PUNCH

In our September Alert, employers were informed about the two—step planned increase in the minimum wage of $9.00 per hour, effective July 1, 2014, and subsequently $10 per hour by January 2016 . These increases in the minimum wage impact whether employees will qualify for one of the "**white collar" overtime exemptions** (executive, administrative, or professional) under California law. One criterion for these exemptions is that the employee receive a monthly salary that is no less than two times the California minimum wage for full-time employment (40 hours per week). The current minimum salary is $33,280. As of July 1, 2014, the minimum annual salary for employees covered by these exemptions will be $37,440 ($18 per hour), and by 2016 at least $41,600 ($20 per hour).

The minimum wage increase will also impact the **inside commission salesperson exemption** from overtime under Wage Orders 4 and 7. That exemption requires that commissions must make up more than half the employee's compensation and the employee must earn more than one and one-half the minimum wage for all hours worked. As such, to be exempt from overtime, inside salespersons will need to earn at least $13.51 per hour beginning July 1, 2014, and at least $15.01 per hour by January 1, 2016.

This increase in the minimum wage rate provides a good opportunity for California employers to audit their pay practices and ensure that they are in compliance with all wage and hour laws. Examination of pay practices involving piece-rate and com-

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mission-paid employees is especially important to ensure compliance with recent court decisions holding that such employees must be paid at least minimum wage for all hours worked.

PRACTICE TIPS:

- Post the new minimum wage poster by July 1, 2014.
- Review the minimum salaries of exempt employees to ensure that the minimum salary requirement is met.
- Review commission agreements for Commission Sales employees to ensure that the minimum wage requirement is met. (Note that these agreements are required to be in writing as of January 1, 2013.)
- Ensure that the changes have been made by your payroll department and/or outside vendor .

SKILLED COMPUTER EXEMPTION

In accordance with CA Labor Code Section 515.5(a)(4), the director of the Department of Industrial Relations (DIR) made an adjustment to the computer software employee's minimum hourly rate of pay exemption. The Office of Policy, Research and Legislation (OPRL) is responsible for determining the adjustments each October 1 with effective dates set for January 1 of the following year.

The 2013 ***hourly* rate** of $39.90 has increased by 0.48 cents to **$40.38 effective January 1, 2014**. The minimum *monthly* salary exemption has changed from $6,927.75 to $7,010.88. Additionally, this brings the minimum ***annual* salary** exemption to **$84,130.53** up by $997.60. The calculations reflect a 1.2% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

ADDITIONAL NEW LAWS FOR 2014

The Domestic Service Workers Bill of Rights

Live-in nannies and housekeepers now have the right to overtime and prohibits employers from engaging in unfair immigration-related practices in retaliation for exercising a legal right. AB 241 adds section 1450 to the Labor Code and requires that individuals in household occupations (such as nannies, housekeepers, and individuals providing care for the elderly or disabled within a household) be paid overtime compensation at a rate of 1.5 times their regular rate for hours worked in excess of 9 hours per day or 45 hours per week. This new law excludes "casual babysitters" whose work is irregular and intermittent, babysitters under the age of 18, and residential care facility employees.

Liquidated Damages for Unpaid Wages

AB 442 amends Labor Code sections 1194.2 and 1197.1 and subjects employers that fail to pay minimum wage to liquidated damages (equal to the unpaid wages and interest) in addition to criminal and civil penalties, as well as the payment of restitution to the employees.

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⇒ **PRACTICE TIP:** Employers should conduct internal audits of their companies' payroll and wage payment policies and practices to ensure compliance with state and federal law.

Recovery of Attorneys' Fees by Employer

SB 462 amends Labor Code section 218.5 and provides that an employer may *only* recover attorneys' fees and defense costs as a prevailing party in an action brought by an employee for unpaid wages if the employer can prove that the employee brought the action "in bad faith." The employer will have the burden of proving that the employee knowingly brought a baseless or frivolous claim.

Meal, Rest and "Recovery" Periods

SB 435 amends Labor Code section 227.6, which mandates that employers pay an additional one hour of pay to employees who are required to work through a legally mandated meal period or rest break. SB 435 extends this requirement on employers to pay an additional hour of pay to situations in which employers fail to provide any "recovery" periods required by Division of Occupational Safety and Health (DOSH also known as Cal/OSHA) regulations. A "recovery" period is a cool down period afforded to employees *who work outside* to prevent heat illness.

⇒ **PRACTICE TIP:** If your company employs outdoor workers who are subject to Cal/OSHA's Heat Illness Prevention regulations, conduct spot audits to ensure that these workers are being provided with the required "recovery" periods or are being paid the one hour penalty. Cal/OSHA's site provides more information on these regulations, including the four steps employers are required to take to prevent heat illness.

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REMINDERS

Are You Reimbursing the Correct Mileage Rate?

Effective January 1, 2014, the IRS Mileage Rates changed. Please see our December 2013 Alert for more details.

Are You Using the Correct Form I-9?

The most current Form I-9, which all employers should be using to document authorization to work lawfully in the United States, is that form revised March 8, 2013, and expiring 3/31/2016.

Both the Employment Law Alert and latest Form I-9 can be accessed at www.koumaslaw.com.

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Expansion of "Paid Family Leave" Benefits

SB 770 amends California Unemployment Insurance Code §3301, which provides six weeks of wage-replacement benefits to workers who take time off to care for a seriously ill child, spouse, parent, or domestic partner, or to bond with a minor child within one year of the birth or adoption of the child.

Beginning July 1, 2014, employees will be able to receive these same wage-replacement benefits while caring for a seriously ill grandparent, grandchildren, siblings, or parents-in-law, as defined in the statute. Neither the prior law, nor the amended version provide for employees to take job-protected leave but rather an expansion of the category of recipients of the benefit.

Additional Protected Characteristic for Harassment/Discrimination Prohibition

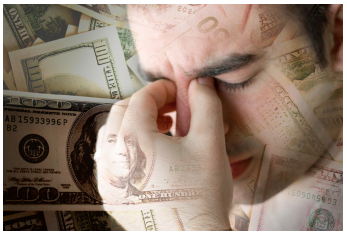
AB 556 amends Fair Employment and Housing Act (FEHA) to add "military and veteran" status to the list of protected classifications. "Military and veteran status" is defined as "a member or veteran of the United States Armed Forces and National Guard, and California National Guard." It will be unlawful to harass or discriminate against an individual because of that individual's military or veteran status. Although state Military and Veterans Code already protects discrimination by employers against active military individuals (but not veterans), this new law also prohibits labor organizations, employment agencies, or apprentice training programs from discriminating or harassing because of these new protected classes.

New/Expanded "Whistleblower" Protections

AB 263 and SB 666 enactments similarly amend California Labor Code §§ 98.6 and 1102.5. Section 98.6 previously prohibited employers from discriminating/discharging an employee or applicant because they engaged in *identified* protected conduct relating to the enforcement of their rights. The amendments now expand this protection to include "a written or oral complaint by an employee that he or she is owed unpaid wages." The laws also prohibit retaliation or other adverse action, thus entitling employees subjected to such to reinstatement and lost wages. Corporate employers or limited liability companies are now subject to a civil penalty up to $10,000 *per* employee *per* violation (of § 98.6).

These laws also amended Lab. Code 1102.5, which previously prohibited *employer* retaliation for disclosing information concerning perceived unlawful employer practices to outside agencies. Now due to the amendments, employers *and anyone acting on behalf of the employer,* are prohibited from retaliating against an employee who makes an *internal disclosure of information* to a person with authority over the employee or another employee who has the authority to investigate, discover or correct the violation or non-compliance. Additional protections have been created prohibiting unfair immigration related practices, by amending Lab. Code 1019, 1019.1, and 244. Employers (and attorneys) risk severe penalties, including possible suspension of its business license, for violation of these provisions.

Change in IRS Rules on "Automatic Tipping"



Employer tip practices at hotels and restaurants have long created employee discontent and litigation. Some employers withhold all or a portion of employee tips to cover administrative costs and others redistribute tips amongst employees, some of whom (like bus staff and kitchen crews) have no opportunity to earn tips. The IRS has adopted new rules **effective January 2014**. The latest rules center around a common practice in the hospitality industry to impose "mandatory gratuities" to large parties of patrons (*e.g.,* "A gratuity of 18% will be charged for parties over 6.") This new law imposes a new duty on employers in the hospitality industry when employees are paid "automatic" tips charged to large groups of patrons. The IRS issued Rev. Rul. 2012-18 to address an employer's tax withholding and reporting of "mandatory tips."

Unlike "tips" (which are left to the discretion of the patron) that subject the employer to tax withholding and reporting obligations only to the extent disclosed by the employee, the Ruling clarifies that **automatic gratuities are not "tips"** under the law, **but rather** service charge **wages**. It is the employer's responsibility to monitor and track all automatic service charge wages, including the obligation to withhold on these wages and report them to the IRS. Once the "tip" is designated as a "mandatory tip", it becomes part of the employee's wages paid by the employer. This will affect the employee's rate of pay since, as wages, mandatory tips must be included into the regular rate of pay for hourly employees unless a basis for exclusion can be found in the Fair Labor Standards Act (the "FLSA").

FUTURE PRESENTATIONS

Employment Law: From A to Z

Date June 20, 2014 **Time:** 8:30a.m. to 4:30p.m.

Location: Holiday Inn Mission Valley Stadium,

3805 Murphy Canyon Road, San Diego (858) 277-1199

Sponsored By: Lorman Educational Services

Prevent the financially crippling employee claims and lawsuits that plague employers in hard financial times. Register for this seminar and get the money-saving employment savvy your company has been looking for. Continuing education credits available. A 20% registration discount will be honored to clients of the firm.