

# EMPLOYER UPDATE

## Employment Law Updates for 2017



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### California Minimum Wage

For employers with at least 26 employees, California's minimum wage will increase to \$10.50/hour on January 1, 2017, and thereafter increasing each year until it reaches \$15 on January 1, 2022.

Employers with 25 or fewer employees, California's minimum wage will lag behind the above schedule by one year, increasing to \$10.50/hour on January 1, 2018, and thereafter increasing each year until it reaches \$15 on January 1, 2023.

The City of San Mateo adopted a minimum wage ordinance effective January 2017 for all employers who are subject to the City of San Mateo Business License Tax or who maintain a facility in the City of San Mateo, with the minimum wage increasing on January 1, 2017 through December 31, 2017 to \$12 per hour (non-profits \$10.50 per hour.)

### Our Legal Services

Avoiding costly employment litigation begins with the establishment of effective employee policies and procedures. Our attorneys work with our employer clients to develop and update employment policies and practices focused on each business' particular needs. We draft employee handbooks and keep up to date on evolving State and Federal laws so that we can advise our clients to ensure compliance with workplace matters. In addition, we advise our business clients on handling "problem" employees, internal grievances, leaves of absence, independent contractor/employee distinction issues, disability accommodation, wage and hour matters, and employee severance agreements.

Our attorneys also present seminars on a variety of employment topics, such as Prevention of Sexual Harassment, California's Sick Leave Law, and Family and Pregnancy Leave Laws.

Our employer clients can easily update their employment practices with our Smart Employer Package: One hour initial meeting, preparation of an employee handbook tailored to your business, guidance on how to comply with California's mandatory sick leave law and required employment notices, and a follow-up meeting to answer any questions you may have.

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## New Federal Overtime Rule Effective December 1, 2016

On December 1, 2016, the minimum salary for exempt status doubles from \$455 a week to \$913 a week (\$47,476/year). This means that any employee who earns less than this minimum cannot be classified as exempt under federal law. Non-exempt employees are entitled to overtime under federal law. *Note: this is higher than the threshold for California, which, starting January 1, 2017, is \$3640/month or \$43,680/year for businesses with 26+ employees.*

The rule also sets the total annual compensation requirement for highly compensated employees subject to a minimal duties test to \$134,004.

This rule will automatically be updated every three years. The rule does not make any changes to the "duties test" i.e. Executive, Administrative, or Professional, that also must be passed in order for an employee to be classified as exempt.

## Healthy Workplace, Healthy Family Act of 2014

California's sick leave law, which calls for mandatory sick leave for almost all employees in California, went into effect on July 1, 2015. The law requires a minimum of 24 hours or three working days, *whichever is more for a particular employee*, of sick leave per 12 month period. (Refer to DLSE Opinion Letter 2015.08.07.) This means that if an employee works 10 hour days, they are entitled to a minimum of 30 hours of sick leave per 12 month period.

## California Fair Pay Act (SB 358)

The California Equal Pay Act *prohibits an employer from paying its employees less than employees of the opposite sex for equal work*. An amendment signed in October 6, 2015, made the following changes: (1) Required equal pay for employees who perform "substantially similar work, when viewed as a composite of skill, effort, and responsibility"; (2) Eliminated the requirement that the employees being compared work at the "same establishment"; (3) Makes it more difficult for employers to satisfy the "bona fide factor other than sex" defense; (4) Ensures that any legitimate factors relied upon by the employer are applied reasonably and account for the entire pay difference; (5) Explicitly states that retaliation against employees who seek to enforce the law is illegal, and makes it illegal for employers to prohibit employees from discussing or inquiring about their co-workers' wages; and (6) Extends the number of years that employers must maintain employment records from two years to three years.

In September 2016, further amendments were enacted: (1) Prohibiting wage inequality based upon race or ethnicity for substantially similar work; and (2) Specifying that an employee's prior salary cannot, by itself, justify any disparity in compensation.

## Pay Stubs for Exempt Employees

Itemized wage statements shall not be required to show total hours worked by the employee who is exempt from minimum wage and overtime requirements.

## Paid Family Leave Benefits Increased

Beginning January 1, 2018, the amount of paid family leave benefits increases from 55% of earnings to 60 or 70% of earnings, depending on the employee's income (subject to a maximum weekly benefit limit). In addition, the current seven-day waiting period to receive such benefits is eliminated.

## Additional Workplace Smoking Restrictions

Smoking is now prohibited in owner-operated businesses. Most of the specified exemptions that permit smoking in certain work environments, such as hotel lobbies, bars and taverns, banquet rooms, warehouse facilities, and employee break rooms have also been eliminated.

## All Gender Restrooms

Commencing March 1, 2017, all single-user toilet facilities in any business establishment must be identified as all-gender toilets and designated for use by no more than one occupant at a time or for family or assisted use.

## Employee Termination Checklist

- All at will employees who quit (including retire) or are discharged, must receive their final paycheck, including all wages owed, on their last day, if they have given at least 72 hours that they intend to leave the company, or no later than 72 hours after their last day if less than 72 hours-notice is given;
- California Employment Development Department (EDD) unemployment benefits pamphlet, For Your Benefit, DE 2320;
- Notice to Employee as to Change in Relationship, to all discharged or laid off employees no later than the effective date of the discharge or layoff; and,
- COBRA, Cal-COBRA, and WARN Act (for plant closings and mass layoffs) notices, may be required.

There is no requirement that you provide an employee with an explanation as to the reason for the termination. If you ever question whether the reason for termination is legal, reach out to us before making that call. In addition, paying an employee severance is voluntary. We regularly draft and review severance agreements, and can assist employers who are considering this route.

*If you have questions about this information or any other employment law inquiries, please contact one of our employment law attorneys.*

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