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## **New Employment Laws Affecting California Employers**

Effective January 1, 2016

There are twelve (12) significant developments in California employment law, which require your attention:

**1 – State Minimum Wage Increases To \$10 Per Hour.** Effective January 1, 2016, California's state minimum wage will increase to \$10.00 per hour. Please note that some cities, including Berkeley, Oakland, San Francisco, San Jose have higher city-wide minimum wages. Berkeley's minimum wage will increase from \$11.00 per hour to \$12.53 per hour on October 1, 2016, while San Francisco's and San Jose's minimum wages are scheduled to increase gradually from \$12.25 per hour to \$15 per hour by 2018.

Over the past year, discussions have been held in several city councils, most notably Los Angeles, about increasing their local minimum wage to \$15 per hour while the Berkeley City Counsel has discussed raising the minimum wage to \$19 per hour. It is, however, unlikely that further increases will go into effect in the first half of 2016.

*Immediate Action Recommended:* Review your payroll to ensure compliance with applicable local and state wage laws.

**2 – California Fair Pay Act Mandates Equal Pay For Substantially Equal Work.** The California Fair Pay Act expands prior equal pay laws by permitting claims to be based on employee wage rates in any of the employer's facilities and different job categories, so long as the work in questions is substantially similar. Effective January 1, 2016, California employers are prohibited from paying employees of the opposite sex lower wages for:

“[S]ubstantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.”

Once a claim has been made, the burden shifts to the employer to demonstrate that wage disparities between sexes is reasonably based upon an existing written seniority system, merit systems, a system which ties wages to quantity or quality of production, or any other *bona fide* factor other than sex. The employer must also demonstrate that the applicable accounts for the entire differential in wages.

The Fair Pay Act further prohibits employers from preventing employees from disclosing or otherwise discussing their wages with other employees. The Act also increases the the time employers are required to maintain records of employee pay (and the aforementioned defense factors) from two (2) to three (3) years.

*Immediate Action Recommended:* Identify differences in pay paid to employees who perform substantially similar work. Look to ensure that all job descriptions are current and accurately reflect job titles, duties and responsibilities. Train supervisors to be aware of the new law and direct them to help identify potential issues. Document the reasons why pay differences exist, and consult with an employment attorney to help create documentation should sex based pay differences be identified.

**3 – IRS Standard Mileage Reimbursement Rates Decreased.** (Immediate Action Required) Effective January 1, 2016, the IRS Optional Business Standard Mileage Rate ("OBSMR") will decreased from \$0.5750 to \$0.54 per mile. The OBSMR is used by the IRS to calculate the



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deductible costs of operating an automobile for business use in lieu of tracking actual costs. Many businesses use the OBSMR as their "go to" rate of reimbursement for its employees who drive their own car or truck for business purposes. California businesses should however be aware that in 2007, the California Supreme Court found that the OBSMR will not automatically be considered "full compensation" for mileage as the OBSMR does not take into account the actual costs incurred by the employee to operate their vehicle. Full compensation is a matter for negotiation between the employee & employer, and must take into account the costs of gas, vehicle maintenance, depreciation and insurance. See *Gatusso v. HartHanks Shopper, Inc.*

*Recommend Action:* (1) Review your existing policies and forms to confirm that your business engages in a dialogue with each employee to calculate the correct mileage reimbursement rate for each employee. (2) Confirm that personnel and payroll files fully document each employee agreement that either the OBSMR fully compensates him/her for the actual costs of operating his/her vehicle or each employees actual costs to operate their vehicle. (3) Ensure that payroll reimbursement records fully document (i) miles driven and date mileage incurred, (ii) per mile reimbursement rate, (iii) date and amount each employee was reimbursed.

**4 – Modification of the Unruh Civil Rights Act.** Effective January 1, 2016, the Unruh Civil Rights Act of 1959 has been amended to prohibit discrimination in business based on citizenship, primarily language, or immigration status.

*Action Recommended:* Train supervisors to be aware of the new law and direct them to help identify potential issues following existing practices. Consult with an employment attorney as needed.

**5 – Whistleblower Protections Extended.** Under existing California law, employers are prohibited from discharging or taking any adverse employment action against an employee, applicant for employment, or temporary worker because that person has made a complaint to the California Labor Commissioner alleging discrimination, retaliation, or other adverse employment action, or for reporting unsafe working conditions to CalOSHA.

Effective January 1, 2016, the protections previously afforded to whistleblowers have been extended making it unlawful for employers to retaliate against the family members of whistleblowers who work for the same employer.

*Action Recommended:* Train supervisors to be aware of the new law and direct them to help identify potential issues following existing practices. Consult with an employment attorney as needed.

**6 – California's "Kin Care Law" Clarified.** Effective January 1, 2016, California's "Kin Care Law" has been amended to allow employees to use unused accrued paid sick leave to tend to (a) their own health condition or preventative care, (b) a "family member's" health condition or preventative care, or (c) if the employee is a victim of domestic assault, sexual violence, and/or stalking and needs to take time off.

The definition of "family members" has been expanded to include children regardless of age or dependency (including adopted, foster, step, or legal ward); parents (biological, adoptive, foster, step, in-law, or registered domestic partner's parent); spouse; registered domestic partner; grandparent; grandchild; and siblings.

Also effective, January 1, 2016, employers with twenty-five (25) or more employees must provide up to forty (40) hours per year of unpaid time off to employees who are the parent, guardian, grandparent with custody of a child, or person who stands *in loco parentis* to a child,



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so that that person can participate in certain school activities if that child is enrolled with a licensed child care provider, is in kindergarten, or in grades 1 to 12.

*Action Recommended:* Revise applicable sick leave policies, as required. Train supervisors to be aware of the new law and direct them to help identify potential issues following existing practices. Consult with an employment attorney as needed.

**Reminder: Mandatory Paid Sick Leave For All California Based Employees (Immediate Action required).** As of July 1, 2015, all California employers have been required to provide every employee with paid sick leave, and provide an itemized breakdown of the amount of unused accrued paid sick leave on each paystub.

Unless a written policy is adopted, every employee regardless of how they are paid, will automatically receive one (1) hour of paid sick leave for every thirty (30) hours they work. Employees who work full time (1,600 hours) per year, will receive six and a half days (54 hours) of paid sick leave in addition to any paid vacation benefits they already received. Employees who work overtime will accrue more paid sick leave.

Employers can reduce the amount of paid sick leave employees receive by adopting a written policy which provide at least three (3) days (24 hours) paid sick leave each July 1<sup>st</sup>, and replenished any used sick time thereafter.

*Immediate Action is Required.* If you have not already adopted a written paid sick leave policy, or if you are using a PTO policy, which has not yet been modified to account for this new law, we strongly recommend that you consult with an employment attorney before July 1<sup>st</sup>.

**7 – New Prohibitions Against Improper Use Of The E-Verify System.** The E-Verify System is an Internet based system administered by the United States Citizenship and Immigration Service which permits employers to check the eligibility of prospective employees to work legally in the United States.

Effective January 1, 2016, California employers are prohibited from using the E-Verify system to check the status of any existing employee or applicant who has not received an offer of employment, except when the employer is required to use the E-Verify System by federal law or as a condition of receiving federal funds. Penalties for non-compliance range up to \$10,000 per violation.

*Recommended Action:* Consult with an employment attorney and establish clear written policies before using the E-Verify System. Train employees who are required to use the E-Verify System with the restrictions, and their supervisors to be aware of the new law and direct them to help identify potential issues following existing practices.

**8 – Private Attorney General Act (“PAGA”) Revised To Add Certain Cure Provisions.** Enacted in 2004, the Private Attorney General Act (“PAGA”) allows individual employees to stand in the shoes of the California Attorney General and sue their employer on behalf of themselves and other similarly situated employees, splitting any civil penalties awarded. To date, most PAGA lawsuits involve wage claims, many based upon technical violations of California Wage and Hour laws.

Effective October 1, 2015, employers have an opportunity to cure some technical violations, thereby avoiding litigation. The cure applies to two violations, failing to provide (a) the inclusive dates of each pay period on paystubs, and (b) the name and address of an employees legal employer. Under the new law, any cure must be completed within thirty-three (33) calendar days of the postmarked date of a notice of intent to file a PAGA claim.



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*Recommended Action:* Consult with an attorney whenever you receive a demand letter, as the PAGA notice is often buried within other demands. Also, employer who use temporary staffing companies, professional employer organizations aka "PEO" or other like services should have an employment attorney review their employment documentation to ensure full compliance with these wage and hour technicalities.

**9 – Piece-Rate Compensation Modified.** Employees paid on a "piece-rate" basis are traditionally paid for the quantity of goods picked, assembled, or made.

Effective January 1, 2016, employees who are paid on a piece rate basis, must also be paid on a separate hourly rate to compensate them for "non-productive" time. The new law defines "non-productive" time as that time when an employer is (a) not providing piece-rate work, or (b) significant idle time. Piece-rate employees must also receive paid rest and recovery breaks, calculated by formula.

*Recommended Action:* If you employ piece-rate workers, consult with an employment attorney to appropriately review and revise your pay practices as needed.

**10 – Professional Sports Team Cheerleaders Classified As Employees.** Effective January 1, 2016, the cheerleaders of California based professional sports teams who use cheerleaders during exhibitions, events, or games must work as employees and not independent contractors. A "cheerleader" is defined as "an individual who performs acrobatics, dance, or gymnastics exercises on a recurring basis."

*Recommended Action:* Professional sports teams should put cheerleaders on payroll, provide meal and rest breaks and pay overtime as required by applicable local, state and federal law.

**11 – New Enforcement Powers Given To Labor Commissioner.** Effective January 1, 2016, the Labor Commissioner has been given additional enforcement powers. The Labor Commissioner will be able to issue citations and impose penalties in order to enforce local overtime and minimum wage laws.

The Labor Commission has also been empowered to enforce Labor Commission Awards, once the thirty (30) day time to appeal has passed. The Labor Commission may now obtain a Writ of Execution and enforce its wage awards as if it were standing in the shoes of the judgment debtor.

*Recommend Action:* If there are outstanding judgments against your business it is strongly recommended that you consult with an attorney to avoid levy's on employer bank accounts, till taps, and seizure and sale assets and property.

**12 – New Wage Garnishment Law.** Effective January 1, 2016, the amount of money which can be garnished to satisfy a judgment is the lesser of either (a) twenty-five percent (25%) of the judgment debtor's individual weekly disposable earnings, or (b) fifty percent (50%) of the amount by which the judgment debtor's disposable earnings for the week exceed forty times (40x) the state minimum hourly wage, or applicable local minimum hourly wage, if higher, in effect at the time the earnings are payable.

Should you have any questions about these or any other workplace law, or if you would like more information concerning our updates, please contact me at [doug@dmwadelaw.com](mailto:doug@dmwadelaw.com).

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