

# Business & People Strategy Consulting Group 2016 Annual Labor & Employment Law Update

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NEW LAWS FOR CALIFORNIA EMPLOYERS

# Welcome

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## Today's Agenda

- Review of key laws in 2015
- New laws for 2016
- Important cases to consider
- Update of the DOL proposed law

# Presenter

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Dr. Carlyle Rogers

- President and CEO of BPSCLLC
- Over 25 years' HR and employment law experience
- Expert in multistate and federal labor & employment laws, compliance and practices
- Doctorates in Jurisprudence (JD; Law) and Psychology (PsyD)
- Certified Interrogator and Member of the Association of Reid Trained Investigators
- Author of “Dirty Little Secrets: Declassifying the Employment Game”

# Review of 2015

# Paid Sick Leave

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January 1, July 1 and July 13, 2015

Mandatory Paid Sick Leave

Grant (24 hours) or accrual (48 hours) minimum

Pay stub reporting requirements

Recordkeeping requirements

Regular rate of pay

2 lookback periods to calculate regular rate of pay (workweek or 90 days)

# New for LA County in 2016

# LA County Minimum Wage

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Unincorporated areas of LA County to \$15/hour by 2020

Employers with 26+ employees

- July 1, 2016 \$10.50 per hour
- July 1, 2017 \$12.00 per hour
- July 1, 2018 \$13.50 per hour
- July 1, 2019 \$14.25 per hour
- July 1, 2020 \$15.00 per hour

Employers with 25 or fewer employees have an additional year to comply.

After 2020, continue to increase annually based upon the Consumer Price Index averaged over the previous 20 years.

# LA County Minimum Wage

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Non-Profits are included in the increase but may apply for a waiver if they meet defined criteria.

Only non-profits where the top executive earns less than eight times the wage of the lowest-paid employee may apply.

Must also have transitional employees or be primarily funded by state or federal reimbursements.

**For more information about the areas included in the unincorporated areas visit**  
[http://planning.lacounty.gov/view/unincorporated\\_los\\_angeles\\_county/](http://planning.lacounty.gov/view/unincorporated_los_angeles_county/)

# New for CA in 2016

## All Industries

# CA Minimum Wage

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## **California \$15 Minimum Wage Initiative (15-0032 and 15-0105)**

Proposed for CA ballot November 8, 2016

Measure 15-0032 to increase state minimum wage to \$15 by 2021

Measure 15-0105 to increase state minimum wage to \$15 by 2020

Currently supported by Lt. Governor Newsom

# State Minimum Wage Increase

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Effective 1/1/2015 the state minimum wage is \$10.00

This also means that the minimum salary for an employee classified under the Executive, Administrative or Professional exemptions must receive no less than:

- \$41,600 per year
- \$800 per week

# Summary

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Hourly (non-exempt employees) move to no less than \$10 per hour.

Exempt employees under Executive, Administrative & Professional exemptions to no less than \$41,600 per year.

# AB 583

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## Employees Who Are Members of National Guard

Existing law provides employment protections for members of the National Guard who have been ordered into active state or federal service.

Among other things, the member of the National Guard is entitled to be **restored to his or her former position or to a position of similar seniority, status and pay without loss of retirement or other benefits** unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

# AB 583

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The returning member of the National Guard also shall not be discharged without cause within one year after he or she has been restored to the position.

AB 583 law extends these protections to members of the National Guard of other states who have left a position in private employment in California.

# Summary

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The same protections are extended to members of the National Guard of other states who have left a position in private employment in California.

# AB 622

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Effective 1/1/2016 (e-Verify)

AB 622 adds section 2814 to the Labor Code to **prohibit an employer from using E-Verify to check the employment authorization status of an existing employee or an applicant who has not received an offer of employment**, except as required by federal law or as a condition of receiving federal funds.

Each employer that uses E-Verify in violation of this new section is liable for \$10,000 per violation.

# AB 560

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## Immigration and Minors

AB 560 closes a loophole in current law by prohibiting the consideration of a minor child's immigration status when that child is seeking recovery from intentional or negligent acts that harm.

It provides additional protection for child workers to clarify that their immigration status is not relevant to the issue of whether their employer violated the law or to what remedies are available to the worker.

# AB 970

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Effective 1/1/2016 (Labor Commissioner Enforcement Authority)

Provides the Labor Commissioner with authority to investigate and at the request of the local government, to enforce local laws regarding overtime hours or minimum wage provisions.

The Labor Commissioner has authority to issue citations and penalties for violations, but cannot issue violations if the local entity has already issued a citation for the same violation.

The bill also authorizes the Labor Commissioner to enforce Labor Code section 2802 which requires employers to pay for business related costs that the employee directly incurs in discharging their duties for the employer.

# AB 987

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Effective 1/1/2016 (Disability and Religious Beliefs Accommodations)

Employers are prohibited from retaliating or otherwise discriminating against an employee for **requesting accommodation of his or her disability or religious beliefs**, regardless of whether the accommodation request was ultimately granted.

The new law is intended to clarify a portion of the holding in the published decision of *Rope v. Auto-Clor System of Washington, Inc.* 220 Cal. App. 4th 635 (2013).

# Summary

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Be sure to closely review requests for accommodation due to an employee's disability or religious beliefs, regardless of whether the accommodation request was ultimately granted.

Document all discussions and actions taken/not taken.

# AB 1509

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Effective 1/1/2016 (Anti-Retaliation)

Prohibits employers from retaliating **against an employee who is a family member of an employee who made a protected complaint.**

The bill extends the protections to an employee who is a family member of a person who engaged in, or was perceived to engage in, the protected conduct or make a complaint protected the law.

This bill also amends Labor Code section 2810.3 to exclude certain household goods carrier employers from the joint liability imposed between the client employer and a labor contractor.

# AB 1509

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If you have an employee who is related to another employee who was a whistleblower, be sure that there is no retaliatory or adverse action taken against that employee based upon the whistleblowing.

# AB 1513

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Effective 1/1/2016 (Piece-Rate Employees)

Makes it even more difficult for California employers to pay employees on a piece-rate basis.

Employers must pay piece-rate employees for rest and recovery periods (and all other periods of “nonproductive” time) separately from (and in addition to) their piece-rate compensation.

Specifically, employers will need to pay the following rates for rest and recovery periods and “other nonproductive time”.

# AB 1513

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Rest and recovery periods...

Employers must pay a piece-rate employee for rest and recovery periods

...at an average hourly rate that is determined by dividing the employee's total compensation for the workweek

...(not including compensation for rest and recovery periods and overtime premiums)

...by the total hours worked during the workweek (not including rest and recovery periods).

# AB 1513

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Other nonproductive time...

Employers must pay piece-rate employees for other nonproductive time at a rate that is no less than the minimum wage.

If employers pay an hourly rate for all hours worked in addition to piece-rate wages, then those employers would not need to pay amounts in addition to that hourly rate for the other nonproductive time.

# AB 1513

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Employers must specify additional categories of information on a piece-rate employee's itemized wage statement:

- the total hours of compensable rest and recovery periods,
- the rate of compensation paid for those periods, and
- the gross wages paid for those periods during the pay period.

If employers do not pay a separate hourly rate for all hours worked (in addition to piece-rate wages), then the employer must also list:

- the total hours of other non-productive time,
- the rate of compensation for that time, and
- the gross wages paid for that time during the pay period.

# AB 1513

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AB 1513 also contains a safe harbor provision for employer who, in the past, may not have properly paid piece-rate workers for rest and recovery periods or non-productive time and face liability.

Employers who want to take advantage of the safe harbor provision will need to meet the statutory requirements by December 15, 2016.

# Summary

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Employers must pay piece rate employees for rest and recovery periods separate from their piece rate comp.

Specific information must be itemized on the employee's wage statement.

# SB 358

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## Equal Pay Act

California's equal pay statute, first enacted in 1949, was significantly modified to **lower the burden of proof for plaintiff's claims, to greatly increase the burden of proof for an employer's defenses, and to allow employees to ask other employees about the amount of their wages for the purpose of ascertaining whether there may be a factual basis for an equal pay claim (CA Fair Pay Act).**

**SB 358 vastly increases the employer's burden in defending a claim of unfair pay by requiring an employer to show, through competent evidence, that any difference in compensation is not sex-based, is related to the position in question, and there exists a business necessity for the wage differential.**

# SB 358

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Under SB 358, the requirement of "same establishment" has been deleted, and the employee need only show he or she is not being paid at the same rate for "substantially similar work."

Substantially similar work means a composite of skill, effort, and responsibility, performed under similar working conditions – but it need not be the same exact job.

# SB 358

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Once the employee has made such a showing, SB 358 shifts the burden to an employer to affirmatively demonstrate the pay difference being complained about is based on any or all of these specific factors:

- a seniority system,
- a merit system,
- a system that measures earnings by quality or quantity of production, or
- a bona fide factor other than sex, such as education, training, or experience.

# SB 358

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SB 358 expressly prohibits an employer from **preventing its employees from disclosing their own wages, discussing the wages of others, inquiring as to other employees' wages**, or assisting another employee in asserting his or her rights under Labor Code Section 1197.5.11

However, employers should note the law provides that no one, including the employer, is obliged to make any disclosures concerning employees' wages.

# SB 358

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SB 358 prohibits employers from discriminating or retaliating against any employee for invoking the employee's own rights under this amended section, or assisting others to invoke their rights under the newly amended law.

An employee may, within one year of the accrual of a cause of action, bring a civil action for such discrimination or retaliation to recover lost wages and benefits, along with interest and appropriate equitable relief.

There is no administrative exhaustion required before an employee files suit.

SB 358 extends the time period for keeping records related to employees' terms and conditions of employment (including but not limited to employees' wages and job classifications) from **two to three years**.

# Summary

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Employer's burden of proof for claims of unequal pay based upon gender.

Employees need to only demonstrate paid lower rate for substantially similar work.

Once demonstrated, employer has to prove otherwise, based upon identified factors.

Employers may not take action or prevent employees from disclosing or discussing their own or other's wages.

# SB 358 (Recommended Steps)

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Review all compensation-related policies and procedures with counsel to ensure all additional requirements are met.

Review employees' job descriptions and current salaries to ensure any pay differentials are completely accounted for by any or all of the above-numerated factors.

Train anyone who makes compensation-based decisions on the amended statute's requirements and on what factors compensation decisions can be based.

Confirm there is an adequate internal complaint procedure to bring to light and address any wage differential issues.

# SB 358 (Recommended Steps)

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Review any references to compensation in employee handbooks to ensure their provisions are consistent with the newly-amended statute, including revising any blanket prohibitions in the handbook on employees disclosing their compensation to others.

If an employer receives an inquiry from an employee about other employees' salary information, it may not preclude the employee from making such inquiry, but it may decline to disclose the salary of any of its employees.

Update internal record retention requirements to reflect the new three-year retention period for records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by the employer.

Remind supervisors of employees' limited right to ask co-workers about their compensation for the purpose of ascertaining their rights under the amended statute.

# SB 501

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Effective 7/1/2016 (Garnishments)

SB 501 reduces the prohibited amount of weekly disposable earnings that may be garnished pursuant to a withholding order.

Existing law prohibits the amount of weekly disposable earnings subject to levy under an earnings withholding order from exceeding the **lesser of 25% of the individual's weekly disposable earnings** or the amount by which the individual's disposable earnings for the **week exceed 40 times the state minimum hourly wage** in effect at the time the earnings are payable, as specified, unless an exception applies.

# SB 501

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Under SB 501 the existing law reduces the prohibited amount of an individual judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order from exceeding the lesser of **25% of the individual's weekly disposable earnings** or **50% of the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage**, or applicable local minimum hourly wage, if higher, in effect at the time the earnings are payable.

Note:  $40 \times \text{Min Wage} = \$400$

# SB 530

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January 1, 2014 SB 530 provided significant protections to **ex-offenders who committed crimes, including felonies**, when it comes to job hunting and what **employers can legally discover or use**.

The new law amends California Labor Code Section 432.7 to explicitly **prohibit employers from asking an applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning a conviction that has been judicially dismissed or ordered sealed**.

The current law already provided protection when it came to an arrest that did not result in a conviction (although it permits employers to utilize a case that is currently pending and not yet resolved.)

# SB 530

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There are exceptions when it comes to expunged crimes where:

- the employer is required by law to obtain that information,
- the applicant would be required to possess or use a firearm in the course of his or her employment,
- an individual who has been convicted of a crime is prohibited by law from holding the position sought by the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation, or
- if the employer is prohibited by law from hiring an applicant who has been convicted of a crime.

# SB 530

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The new statute expands the relief to felonies that cannot by law ever be reduced to a misdemeanor.

It also impacts felonies that are known as “wobblers” that can be either a misdemeanor or a felony, where a Court does not grant a motion under Penal Code Section 17b to reduce the felony offense to a misdemeanor before granting the expungement.

The statute also adds protections for judicial set asides occurring under three related but different sections of California law, Penal Code sections 1203.4a, 1203.45, and 1210.1 of the Penal Code.

# SB 530

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As a result, an employer cannot ask, seek or utilize the prohibited information.

Although the exact impact of these new laws remains to be seen, it is clear that employers must pay close attention to the new since Labor Code section 432.7 provides civil damages and makes an intentional violation a misdemeanor.

# Summary

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Prohibits employers from asking candidates to disclose convictions that have been judicially dismissed or ordered sealed (some exceptions).

# SB 579

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Effective 1/1/2016 (Time Off for School Activities and Kin Care)

Existing law prohibits an employer who employs **25 or more employees working at the same location** from discharging or discriminating against an employee who is a parent, guardian, or grandparent having custody of a child in a licensed child day care facility or in kindergarten or grades 1 to 12, inclusive, **for taking off up to 40 hours each year for the purpose of participating in school activities**, subject to specified conditions.

The law is amended to provide these protections for employees under a broader “child care provider”, and applies **these protections to employees who are a stepparent, foster parent, or who stands in loco parentis to a child.**

# SB 579

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The bill also amends California's Kin Care law set forth in Labor Code section 233 to require employers to allow employees to use **“an amount not less than the sick leave that would be accrued during six months”** for family members as defined in the Healthy Workplaces, Healthy Family Act of 2014, otherwise known as **California's paid sick leave law**.

The Kin Care law is amended under this bill to provide that employers must allow employees to use up to **one-half of their sick leave to attend to victims of domestic violence or the diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or the employee's family member**.

# Summary

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Employers with 25+ employees working at the same location must extend time off for school activities to stepparents, foster parents, or those in loco parentis.

Extends Kin Care Law to allow employees to use an amount not less than sick leave that can be accrued in six months (per CA PSL) and allows use for attending to victims of domestic violence or diagnosis, care, treatment of an existing health condition for the employee's family member.

# SB 588

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Effective 1/1/2016 (Labor Commission Collection Authority)

SB 588 amends the Labor Code to provide the Labor Commissioner many more rights in collecting judgments against employers who are found liable for unpaid wages.

The Labor Commissioner has authority to **issue a lien against on an employer's property** for the amount of the judgment.

Also, if an employer has a judgment entered against it, and it is **not paid within 30 days after the time to appeal the judgment, the employer is required to obtain a bond** in order to continue to do business in California.

# SB 588

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The law also imposes personal liability for employers in adding Labor Code section 98.8(f):

- **Any person** who is noticed with a levy pursuant to this section and who fails or refuses to surrender any credits, money, or property or pay any debts owed to the judgment debtor **shall be liable in his or her own person or estate** to the Labor Commissioner in an amount equal to the value of the credits, money, or other property or in the amount of the levy, up to the amount specified in the levy.

# New for CA in 2016 Industry Specific

# AB 202

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Effective 1/1/2016 (Professional Cheerleaders)

AB 202 requires California-based professional major and minor league baseball, basketball, football, ice hockey, and soccer teams to classify and treat cheerleaders who perform during those teams' exhibitions, events, or games **as employees and not independent contractors.**

# AB 525

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Effective 1/1/2016 (Franchise Relationships)

The California Franchise Relations Act sets forth certain requirements related to the termination, nonrenewal, and transfer of franchises between a franchisor, sub-franchisor, and franchisee, as those terms are defined.

**AB 525 requires franchisors that comply with the law when they terminate or don't renew franchises to buy their franchisees' business assets, even if the franchisor did not sell the assets to the franchisee or benefit in any way from the sale.**

# AB 525

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The purchase obligation **exists even when a termination results from a franchisee having lied, cheated, refused to pay fees, flaunted customer service standards, and broken the law.**

Although the repurchase duty **does not apply if a franchisee can control the principal place of its franchise business after the termination**, if it does apply, it will be very difficult to understand the details of the purchase obligation.

# AB 525

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Under the new law, a franchisor is also **liable for refusing to approve a proposed buyer of a franchised business if the franchisor does not supply the franchisee with written standards that would disqualify the buyer.**

Additionally, a franchisor **must prove that it has consistently applied those same standards to “similarly situated franchisees.”**

Finally, the law **prohibits a franchisor from terminating a franchise unless the franchisor has failed to “substantially comply” with a lawful requirement.**

# AB 621

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## Port Transportation Companies

Establishes the Motor Carrier Employer Amnesty Program for port transportation companies (aka port drayage companies).

The amnesty program allows motor carrier companies to avoid liability for **misclassification of drivers as ICs** if the companies voluntarily enter into settlement agreements with the Labor Commissioner by January 1, 2017.

This includes the motor carrier agreeing to convert all of its commercial drivers to employees, and the settlement agreement containing prescribed components, including, but not limited to, an agreement by the motor carrier to pay all wages, benefits, and taxes owed, if any.

# AB 359 and AB 897

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Effective 1/1/2016 (Grocery Stores)

AB 359 & 897 add Labor Code sections 2500-2522 to require a “successor grocery store employer” to **retain the current grocery workers for 90 days upon the “change in control”** of a grocery store.

The new law, previously discussed here also imposes specific requirements on the incumbent grocery store.

# AB 359 and AB 897

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Governor Brown noted in his signing message an ambiguity in how the law applies if an incumbent grocery employer has ceased operations, and noted the author and sponsor have committed to clarify that the law would not apply to a grocery store that has ceased operations for six months or more.

The Legislature responded with AB 897, which will **exclude** from the definition of “grocery establishment” a retail store that **has ceased operations for six months or more**.

# AB 1422

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## Transportation Network Companies

AB 1422 provides that a transportation network company is eligible and required to participate in the Department of Motor Vehicles' pull-notice system to **regularly check the driving records of a participating driver** regardless of whether the participating driver is an **employee or an independent contractor** of the transportation network company.

Because a **violation of this requirement would be a crime**, the bill would impose a state-mandated local program.

# AB 1422

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Existing law defines a “transportation network company” to mean an organization, including, but not limited to:

- a corporation, limited liability company, partnership, sole proprietor, or any other entity,
- operating in California
- that provides prearranged transportation services for compensation
- using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.

# SB 327

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Became effective October 5, 2015 (Health Care Employees)

CA SB 327 made **meal period waivers** for health care employees (in California IWC Wage Orders No. 4-2001 and No. 5-2001 § 11(D)) **valid and enforceable**.

The intent behind the waiver is to allow health care workers, who typically work significantly long shifts, to waive one of two meal periods so they can go home to their families earlier.

Thus, it clarifies that existing law regarding a health care employee's ability to waive voluntarily one of the two meal periods on shifts exceeding 12 hours remains in effect.

# SB 658

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Effective 1/1/2016 (Schools/Education)

Under SB 658 a **head of school or principal is no longer required to designate trained employees who are available to respond to emergencies that may involve an AED.**

These amendments do not prohibit a school employee or other person from rendering aid with an AED.

Furthermore, persons who render such aid are **exempt from civil liability for emergency aid by the use of an AED rendered in good faith and not for compensation**, except if such aid results in personal injury or wrongful death resulting from gross negligence or willful or wanton misconduct.

# SB 703

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SB 703 amends existing law to **prohibit the state from entering into contracts** for goods or services of \$100K or more with a **contractor that discriminates** on the basis of **gender identity**, such as being transgender, **when providing benefits**.

# Important Case Law

# EEOC v. McLane Company

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November 2012, Judge G. Murray Snow of the U.S. District Court for the District of Arizona nixed a subpoena issued by the EEOC seeking employee pedigree information (name, address, telephone number and social security number), and information regarding the reasons for employee terminations.

The court held that the EEOC did not need this information in order to determine whether the employer, McLane Company, Inc., allegedly violated Title VII.

The EEOC appealed.

# EEOC v. McLane Company

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On October 27, 2015, the Ninth Circuit reversed and sustained the EEOC's broad subpoena in EEOC v. McLane Company, Inc., Case No. 13-15126, 2015 U.S. App. LEXIS 187702 (9th Cir. Oct. 27, 2015).

The Ninth Circuit held that employee pedigree information was relevant to the EEOC's investigation and should be produced.

Further, the Ninth Circuit held that information regarding termination reasons was also relevant to the investigation, and remanded the matter to the District Court to determine whether the production of this information would be unduly burdensome.

# EEOC v. McLane Company

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The Ninth Circuit's opinion broadens the scope of information the EEOC may receive when investigating a charge, requiring that a request only be somehow relevant to a charge — quite a loose standard.

While employers should continue to object to EEOC requests on the bases of relevance and over breadth, employers should also “tee-up” their arguments that compliance with a request or subpoena is unduly burdensome.

The Ninth Circuit's opinion is a must read for employers, especially employers doing business in Ninth Circuit states (Alaska, Arizona, California, Idaho, Montana, Oregon and Washington).

# Sheridan v. Touchstone Television Prods

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On October 20, 2015, the California Court of Appeal held, in *Sheridan v. Touchstone Television Productions, LLC*, that an employee need not exhaust his or her administrative remedies before filing suit under California Labor Code section 6310, which prohibits retaliation against an employee who makes a bona fide complaint of “unsafe working conditions or work practices.”

# Sheridan v. Touchstone Television Prods

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Touchstone hired actress Nicollette Sheridan in 2004 to play the character Edie Britt on the television series *Desperate Housewives*.

The contract was for one season, with the option to renew each year for an additional six seasons.

The contract was renewed for five seasons, but after Sheridan complained to Touchstone that Marc Cherry, the show's creator, struck her during a rehearsal in September 2008, Touchstone chose not to renew her contract for the sixth season.

# Sheridan v. Touchstone Television Prods

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In April 2010, Sheridan sued Touchstone for, inter alia, wrongful termination, alleging that Touchstone fired her because of her complaint about the alleged battery, later amending to add a claim under section 6310.

That claim was dismissed due to Sheridan's **failure to exhaust administrative remedies**, as required by the California Court of Appeal's opinion in *MacDonald v. State of California*.

During the Sheridan case, the Labor Code was amended to specify that exhaustion was not required, and the *MacDonald* case was ordered de-published.

# Sheridan v. Touchstone Television Prods

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The Court of Appeal reversed the trial court's decision, holding that the plain language of the statute did not require exhaustion.

The panel considered the post-amendment language expressly stating that stating that the amendment simply clarified the existing statutory intent.

The Court of Appeal's decision highlights the effect that amendments to the Labor Code may have on pending cases when seen as clarifying, rather than changing, existing statutory language.

# Iskanian v. CLS Transportation LA

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The California Supreme Court ruled that class action waivers can be enforceable, following the standards set forth by the U.S. Supreme Court in *AT&T Mobility v. Concepcion*.

However, Plaintiffs continually challenge class action waivers on numerous grounds, and it is critical employers' agreements are properly drafted and up-to-date.

In addition, while courts will uphold class action waivers, the California Supreme Court held that employee may still bring representative actions under the Private Attorneys General Act (PAGA).

PAGA claims are limited to specific penalties under the law, and have a much shorter one year statute of limitations compared to potentially a four year statute of limitations for most class actions.

# Ajamian v. Cantor CO2e

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Generally speaking, when it comes to arbitration agreements, if the agreement is drafted and implemented properly, it is enforceable.

However, arbitration agreements are routinely struck down by courts if they are not properly drafted.

A California court held in *Ajamian v. CantorCO2e*, that an arbitration agreement was not enforceable because it required the employee to waive statutory damages and remedies.

In addition, the agreement in that case only allowed the employer to recover its attorney's fees if successful, not the employee.

# DOL Proposed Law Update

# The Proposal

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On June 30, 2015, the United States Department of Labor (“DOL”) released proposed regulations that would modify certain provisions of the Fair Labor Standards Act (“FLSA”), including the so-called “white collar exemptions.

Given that the comment period following the DOL’s June 2015 proposed rulemaking closed on September 4, 2015, changes to the FLSA could be issued at any time, although the DOL has indicated that the Final Rule revised regulations are likely to be issued in July 2016.

# What We Know

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1. The DOL proposes increasing the salary threshold for exempt employees to the 40th percentile of weekly earnings for full-time salaried workers, or \$970/week or \$50,440/year in 2016.
2. The DOL proposes increasing the total annual compensation needed to meet the “highly compensated” employee exemption to \$122,148/year.
3. The DOL proposes having a mechanism in the regulation for automatically updating the compensation/salary threshold going forward to ensure that the compensation/salary provides a meaningful test to measure the exemption.
4. The effect of these changes will be to increase the number of employees who are entitled to overtime pay.
5. Penalties for misclassifying employees as exempt include back wages, liquidated (double) damages, and attorneys’ fees and costs.

# Current Status

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In November, DOL issued its regulatory agenda for 2016, listing an anticipated date for issuance of the final overtime exemption rules in July.

DOL has received over 300,000 comments on its proposal, and in addition, the final rule must pass Office of Management and Budget review before final approval.

OMB review frequently results in delays in issuance of final regulations beyond the date anticipated by the promulgating agency.

# Things to Do in 2016

# Employee Handbooks

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Employers need to ensure their policies are up to date, and a few areas that saw updates that may need attention in regards to employee handbooks are the revisions to California's paid sick leave, the enforceability of arbitration agreements that contain class action waivers, and equal pay protections.

# Minimum Wage

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California minimum wage increases to \$10 per hour effective January 1, 2016.

Employers need to remember that the state minimum wage also sets the salary basis for exempt employees, and therefore the minimum salary that must be paid to exempt employees will also be increasing.

# Wage & Hour Issues

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There are so many wage and hour areas that employers need to ensure compliance with, but here are a few to pay close attention to:

- Timing of wages, and that employees are paid all final wages on time.
- Review to make sure that the company is paying for training time when required.
- Ensure that all independent contractors are classified properly.
- Ensure all exempt employees are classified correctly.

# Meal and Rest Periods

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Even though it is widely known by employers of their obligations to provide meal and rest breaks, there is still substantial litigation over this issue.

Therefore, employers should continually review their meal and rest break policies and practices to ensure compliance with the law.

# Pay Stubs

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Employers should ensure their pay stubs provided to employees comply with the requirements of Labor Code section 226.

The DLSE provides a sample of what information a compliant pay stub should list for an hourly employee, but don't forget about the requirement to report an employee's accrued paid sick leave.

# Pay Stubs

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Employers should especially conduct this review if they paid employees on a piece-rate basis.

The law now mandates that employers pay piece-rate employees separately for the following activities:

- Rest breaks
- Recovery periods (for employees who work outside)
- Non-productive time (defined by the law)

# Pay Stubs

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- Rest breaks
- Recovery periods (for employees who work outside)
- Non-productive time (defined by the law)

# QUESTIONS

# Thanks for Attending

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These will be available after 3PM Thursday January 7, 2016.

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