

The BPSC Blast

HR, Compliance, & Employment Law for the California Employer
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2016 California Job-Killer Bills

Think 2015 has been crazy so far with the new laws, especially getting to compliance with the new Paid Sick Leave law? Well...buckle up...2016 is shaping up to be even worse.

Beyond the Los Angeles County minimum wage increase, the minimum salary for exempt employees looking to move to \$50,440, and the Department of Labor joining forces with the states to flip the Independent Contractor relationship upside down, California has some extremely employer “unfriendly” bills that are moving quickly through the Assembly and Senate. Here is a quick overview:

- AB 357 Predictable Scheduling Mandate and Predictability Pay For Food and Retail Establishments
- SB 3 Automatic Minimum Wage Increase (\$11.00 on 1/1/16 and \$13.00 on 1/1/2017)
- SB 406 Expansion of California Family Rights Act (moves the requirement from 50+ employees to 25+ employees)
- SB 563 Increase in Workers’ Compensation Costs
- AB 465 Barring Mandatory Arbitration Agreements

For more information about these pending bills, please join us Wednesday August 5 at 10AM for our Free Webinar Series. To register, please visit www.bpscllc.com and click on the Webinars & Training Tab.

Misclassifying Employees Overview

The Issues

1. Federal minimum annual salary for exempt employees increase to \$50,440 pending.
2. The Department of Labor releasing their direction about distinguishing employees from independent contractors.
3. The Department of Labor collaborating with states to combat misclassified independent contractors.
4. The CA EDD aggressively auditing companies with independent contractors.
5. The CA minimum wage increasing to \$10 (or even up to \$11) in 2016.
6. The DOL, IRS and EDD taking the stance that all relationships are employee unless proven otherwise.

With the pending laws and positions of both state and federal labor agencies, California employers with exempt (salaried; not entitled to overtime) employees and independent contractors should immediately begin reviewing these relationships. These are two areas that have been at the forefront of litigation for some time, but never to the degree as now.

Exempt Employees: The reality is that it is far more difficult to establish exemption under CA exempt definitions that most employers understand. Many large chains (Starbucks, McDonalds, etc.) have paid extensive amounts in litigation costs, wages and penalties for

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misclassifying their managers.

To meet exemption in CA, employees must fit into very specific criteria under the Executive, Administrative, Professional, Outside Sales, or Computer Professional exempt classes. With the exception of Computer Professionals, exempt employees must also be paid no less than \$37,440 per year (\$720 per week). If the federal minimum is passed at \$50,440, all exempt employees will have to be increased to the rate to retain their exempt status.

Independent Contractors: With at least six state and federal agencies establishing rules and definitions as to what they consider an independent contractor...being compliant is difficult enough. Now, the Department of Labor has released a bit more clarity related to their criteria as well as a strong statement about tackling misclassified employees.

Historically, the common themes amongst the various rules has been about control and economics. If the employer has the control and ability to determine the individual's economics...then it is an employee relationship. If the individual has the control and ability to determine their economics...then it is an independent contractor relationship.

The trouble is (and continues to become worse) is being able to clearly define "control". Furthermore, the collaboration of the DOL, IRS and state agencies is setting the stage for employer headhunting...with significant liabilities and expense to the employers.

In summary, this is a call to action California employers. 2016 is going to see extinction level litigation for many employers and getting ahead of it now is your best defense.

Monthly Employment Law Quiz July 2015 Answers

Week 1

45 hours, \$10/hr, \$450 commission
 40 regular hrs. + 5 OT hrs.
 $[45 \times \$10] + \$450 = \$900 / 45 \text{ hours}$
 Regular Rate of Pay = \$20.00/hour
 OT Due = $\$20 \times 0.5 \times 5 = \50.00
 Week 1 Total: $\$450 + \$450 + \$50 = \950

Week 2

35 hours, \$10/hr, \$125 commission
 30 regular hours + 5 X 7th day work rule hrs
 $[35 \times \$10] + \$125 = \$475 / 35 \text{ hours}$
 Regular Rate of Pay = \$13.57/hour
 OT Due = $\$13.57 \times 0.5 \times 5 = \33.93
 Week 2 Total: $\$350 + \$125 + \$33.93 = \508.93

Total Gross Check = \$1,458.93

Monthly Employment Law Quiz

A California employer with 15 employees hires a female customer service rep on July 1, 2015. On July 17, 2015 she notifies her manager that she is due to deliver her baby August 1, 2015 and her doctor has placed her out on disability starting July 22, 2015. Her doctor has forecasted that she will likely be out on disability until September 10, 2015.

1. Is the employee eligible for any legally protected leave(s)?
2. If so, which ones and for how long?
3. Does the employer have the option to terminate her due to being a new hire?