

# California Labor Law Update

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WHAT'S ON TAP FOR 2017

# Agenda

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Q4 2016 New Laws Going Into Effect

New and Revised Laws for 2017

Pending Laws for 2017

The Good News (Employer Unfavorable Laws That Were Killed)

The Bad News (Employer Favorable Laws That Were Killed)

Preparing for 2017

# Presenter

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## **Dr. Carlyle Rogers**

- President & CEO of Business & People Strategy Consulting Group
- Over 26 years of human resources, labor & employment law, and compliance experience
- Doctorates in Law (JD) and Psychology (PsyD)
- Certified interrogator
- Author of “Dirty Little Secrets: Declassifying the Employment Game”

# Q4 2016 LAWS

# FLSA

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Federal law, thus applying to all states.

Impacts exemptions for Executive, Administrative, and Professional exemptions.

Key provisions include:

- Setting the standard salary level at the 40<sup>th</sup> percentile of earnings for a FT salaried employee in the lowest-wage Census Region;
- Set the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90<sup>th</sup> percentile of a PT salaried employee nationally; and
- Establishing a mechanism to auto update the salary and compensation levels every 3 years.

# Impact

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Minimum compensation for Executive, Administrative, and Professional exemptions is:

- \$913 per week
- \$47,476 per year

HCE minimum is \$134,004 per year.

# Note About Compensation

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Employers may use non-discretionary bonuses and incentives to satisfy up to 10 percent of the standard salary test.

To apply this method, employers must make these payments on a basis of no longer than a quarter.

If an employee does not earn enough in nondiscretionary bonuses and incentive payments in a given quarter to retain their exempt status a "catch-up" payment at the end of the quarter can be made.

# Note About Compensation

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The employer has one pay period to make up for the shortfall (up to 10 percent of the standard salary level for the preceding 13 week period).

Any such catch-up payment will count only toward the prior quarter's salary amount and not toward the salary amount in the quarter in which it was paid. If the employer chooses not to make the catch-up payment, the employee would be entitled to overtime pay for any overtime hours worked during the quarter.



# Compliance

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If below the minimum, then 2 compliant options:

- Increase the compensation to the minimum OR
- Transition from exempt to non-exempt

If transitioning to non-exempt, then non-exempt requirements apply. For instance:

- Tracking hours worked and meal periods;
- Paying overtime premiums (and double time premiums in CA);
- Meal and rest periods; and
- Use of regular rate of pay for overtime calculations (applies to those employees earning commissions, non-discretionary bonuses & incentives, etc.)

# Risks and Liability

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Exempt employees not increased to the minimum salary requirements.

Employees incorrectly classified as exempt, thus triggering:

- Meal and rest period violations & penalties;
- Waiting time penalties;
- Itemized wage statement penalties; and
- Overtime penalties.

PAGA and class actions.

NEW FOR 2017

# SB 3: California Minimum Wage

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On April 4, 2016, Governor Brown signed SB 3, which increases California's minimum wage each year so that it will reach \$15 per hour in 2022 (unless the increases are temporarily delayed at any point due to certain economic conditions).

Currently, California's minimum wage is \$10/hour.

There is a delay in implementations for small businesses.

The schedule for employers with 25 or fewer employees is delayed for one year.

# SB 3: California Minimum Wage

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The new law will increase this amount as follows for employers who employ 26 or more employees:

- On January 1, 2017, the minimum wage will increase to \$10.50 per hour.
- On January 1, 2018, the minimum wage will increase to \$11 per hour.
- On January 1, 2019, the minimum wage will increase to \$12 per hour.
- On January 1, 2020, the minimum wage will increase to \$13 per hour.
- On January 1, 2021, the minimum wage will increase to \$14 per hour.
- On January 1, 2022, the minimum wage will increase to \$15 per hour.

# City & County Minimum Wages

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In addition to the state minimum wage increase, several cities and counties will see increases in their local minimum wage requirements.

## **Emeryville (July 1, 2017)**

- Large employers subject to annual indexing
- Small employers \$14.00/hour

## **Los Angeles (City Districts, Unincorporated Areas; July 1, 2017)**

- Large employers \$12.00/hour
- Small employers \$10.50/hour

**Mountain View (January 1, 2017) \$13.00/hour**

**Oakland (January 1, 2017) Increase based upon annual indexing**

# City & County Minimum Wages

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**Palo Alto (January 1, 2017)** Increase based upon annual indexing

**Richmond (January 1, 2017)** \$12.30/hour

- Employers contributing \$1.50+ to employees medical benefits plan may pay \$1.50 less than the applicable minimum wage.

**San Francisco (January 1, 2017)** \$12.30/hour

**San Jose Alto (January 1, 2017)** Increase based upon annual indexing

**Santa Clara (January 1, 2017)** Increase based upon annual indexing

**San Mateo (January 1, 2017)** \$12.00/hour

**Santa Monica (January 1, 2017; 1 year delay up to 25 employees)** \$12.00/hour

**Sunnyvale (January 1, 2017)** \$13.00/hour

# AB 908: Paid Sick Leave Expansion

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Increases the amount of benefits paid to employees on paid family leave and state disability leave on or after January 1, 2018.

The new law will increase the level of benefits from the current level of 55 percent to either 60 or 70 percent, depending on the applicant's income.

The new law will also remove, effective January 1, 2018, the seven-day waiting period before which individuals would be eligible for family temporary disability benefits.



# AB 2535: Itemized Wage Statements

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Comes on the heels of the recently decided federal case, *Garnett v. ADT, LLC*, and clarifies Labor Code section 226.

Specifies that employers are not required to list the number of hours worked on wage statements for any exempt employee whose compensation is solely based off of salary and the employee is exempt from overtime wages.

# AB 2063: Work Experience Education

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Provides an additional option for a student, at least 14 years old, to participate in work experience education.

The bill also increases the number of hours per week a student may participate in job shadowing from 25 to 40 hours per semester if the principal of the school where the student is enrolled certifies that it is necessary for the student's participation in a career technical education program.

# AB 2068: Talent Services

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Updates the Talent Service Act's existing communication and contractual protections to include new technologies, such as mobile applications.

Specifically, updates the protections for an artist's information or image to include information posted on an online service, online application, mobile application, or website.

Updates the communication and advertisement protections between talent agencies and artists by including communication through the use of a telecommunication device, in print, on the Internet, or through the use of a mobile or online application or other electronic communication.

# AB 2068: Talent Services

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Also adds “text message” and other “electronic communication” to the list of methods by which an artist may ask for photographs and other information about the artist be removed from a Web site, online service, online application, or mobile application owned or serviced by the talent service.

PENDING FOR 2017

# AB 1676: Equal Pay Act (Prior Salary)

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Would prohibit employers from considering prior salary to justify any disparity in compensation.

# SB 1063: Equal Pay Act (Race/Ethnicity)

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Seeks to expand the provisions of last year's Fair Pay Act (which is the strictest gender pay equity law in the country) to race and ethnicity.

As its gender predecessor, it would prohibit employers from paying employees a wage less than the wage paid to employees of a different race or ethnicity for substantially similar work.

# SB 654: Parental Leave

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Would be effective January 1, 2018 and would significantly expand California's parental leave laws by requiring employers with 20 to 49 employees to provide up to six weeks of job-protected parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement.

It would impose many of the same requirements as CFRA:

- To be eligible, an employee must have worked 1250 hours in the preceding 12-month period;
- The employer must guarantee reinstatement of the employee to the same or comparable employment at the conclusion of the leave;
- The employee is entitled to use accrued paid time off during the time off; and
- The employer must maintain and pay for coverage under a group health plan for employees while taking this leave.



# AB 1066: Agricultural Workers

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Agricultural employees have been exempt from the CA wage, hour, meal break requirements and other similar conditions afforded to most other CA wage orders.

The bill is aimed at establishing a four-year phase-on of new overtime rules beginning 2019 with the intent to trigger overtime pay for more than 8 hours of work in the fields in 2022.

It would remove the exemptions for agricultural employees regarding wage, hour, meal break requirements and other similar conditions afforded to most other CA wage orders.

# AB 1066: Agricultural Workers

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Beginning January 1, 2022, any employee affected would be entitled to receive no less than 2 times the employee's regular rate of pay for any hours worked over 12 in a workday.

Employers with up to 25 employees would have an additional 3 years to comply with the phasing in of the requirements.

# AB 2899: Minimum Wage Violation Challenges

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Would require that any employer, prior to filing an appeal of a decision by the Labor Commissioner relating to a violation of wage laws, file a bond with the Labor Commissioner that covers the total amount of any minimum wages, liquidated damages, and overtime compensation owed.

It would require that the bond be issued in favor of the unpaid employees.

It would also provide that the total amount of the bond would be forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings.

# AB 1843: Criminal History

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Would prohibit employers from asking an applicant for employment to disclose any information regarding juvenile convictions.

It would also prohibit employers from seeking or utilizing any information related to juvenile arrests, detentions, or court dispositions as a factor in their employment determination.

# AB 2261: DLSE Enforcement

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Would provide the Department of Labor Standards Enforcement (DLSE) with new independent authority to, with or without an employee complaint, bring an action against an employer who it suspects may have terminated or otherwise discriminated against an employee in violation of any law under the jurisdiction of the Labor Commissioner.

# SB 1001: Unfair Immigration-Related Practices

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Would make it an unlawful employment practice to:

- Request more or different documents than required under federal law to verify that an individual is not an unauthorized immigrant,
- To refuse to honor documents tendered that on their face reasonably appear to be genuine,
- Refuse to honor documents or work authorization based on specific status or term that accompanies the authorization to work, or
- To attempt to reinvestigate or re-verify an incumbent employee's authorization to work using an unfair immigration-related practice.

# AB 2337: Employment Protections

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Would expand the notice requirement employers must give their employees regarding domestic violence protections.

Specifically, it provides that an employer must inform each new employee, and to other employees upon request, of the rights protecting employees affected by domestic violence in writing.

# SB 1241: Employment Contracts

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Would allow an employee to void a contract provision that requires the employee to adjudicate a claim outside of California, or require the employee to waive their protections under California law.

Specifically, it would prohibit an employer from requiring an employee, who resides and works in California, as a condition of employment, to agree to a provision that would either require the employee to adjudicate outside of California a claim arising in California or deprive the employee of the protection of California law with respect to a controversy arising in California.

It also provides that any contract that violates these provisions is voidable by the employee.



# THE GOOD NEWS

(Employer unfavorable laws that didn't make the cut)

# Killed (could have been much worse)

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**AB 67** would have required retail and grocery store establishments, as well as restaurants located within them, to pay at least twice the regular rate of pay for employees who work on Thanksgiving.

**AB 2405** would have required an employer to provide an employee at least eight hours annually of paid, job-protected, time off for an absence under the Family School Partnership Act.

**SB 878** would have required:

- That restaurant, grocery, and retail employers provide non-exempt employees with a 21-day work schedule in advance of their first shift on that work schedule.
- At least seven days advance notice.
- Employers to pay “modification pay”—defined as compensation in addition to regular pay (the hourly rate calculated based upon 90 days prior)—if any scheduled shift is canceled, moved, or added, and for each shift for which an employee is required be on call but is not called into work.

# THE BAD NEWS

(Employer favorable laws that didn't make the cut)

# PAGA Reform

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None of the bills in this year's five-bill Private Attorneys' General Act (PAGA) reform package made it out of the Assembly.

Those bills included:

**AB 2461** would have limited violations an aggrieved employee was authorized to bring and required specific procedures before bringing an action.

**AB 2462** would have provided employers with a right to cure before an employee brought a civil action.

**AB 2463** would have established a penalty cap of \$1,000 for each aggrieved employee.

**AB 2464** would have authorized a court to dismiss an action if the court found the aggrieved employee suffered no appreciable physical or economic harm.

**AB 2465** would have required the Labor and Workforce Development Agency to investigate alleged violations and determine if there was a reasonable basis for a civil action.

# PREPARING FOR 2017

# Don't Learn the Hard Way

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Review your exempt employees to ensure they are classified correctly.

Review your exempt employee compensation to ensure compliance December 1, 2016.

Review your non-exempt employees to ensure compliance with CA and city specific minimum wage laws.

Ensure you have a clearly defined compensation plan/program that meets the requirements under the Equal Pay Act.

# Don't Learn the Hard Way

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Confirm that all non-exempt employees hours worked AND meal periods are tracked.

Confirm that the regular rate of pay is being used to calculate overtime premiums AND California Paid Sick Leave hours.

Be sure that your itemized wage statements are compliant.

Be sure that you have an updated and compliant employee handbook and all required documents required to provide to employees during the course of employment.

# QUESTIONS



# Thanks for attending our webinar!

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If you would like assistance with your human resources, payroll, compliance, or labor & employment law matters, please contact us and a member of our team will be happy to assist.

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