

Preview of 2016 Labor & Employment Laws

A LOOK BACK AT THE YEAR TO DATE AND LOOK FORWARD AT THE NEW AND PROPOSED LAWS THAT WILL IMPACT CALIFORNIA EMPLOYERS

Agenda

- Look back at the year to date
- Look forward to new laws that have been passed and proposed

Year to Date: Paid Sick Leave Law

Paid Sick Leave Law

Effective January 1, 2015 and July 1, 2015 respectively

Established mandatory paid sick leave benefits for most employees in California

Employers can use either or both of accrual and granting methods for benefits

Payment of PSL based upon Regular Rate of Pay

Paystub and record keeping requirements

July 13, 2015 AB 304 revised some of the original PSL verbiage and requirements

2016 DOL: Final Stages

Federal FLSA Exempt Minimum Salary Requirements

2016 minimum annual base salary for exempt employees to move to **\$50,440** annually (\$970/week) from \$23,660 (current).

Potential increase to minimum for highly compensated exemption. Currently at \$122,148. No number set.

Mechanism to annually update the minimum salary and compensation levels for the exemptions going forward.

2016 Final Stages

Potential other areas being examined:

Allowing incentive compensation and nondiscretionary bonuses to be considered towards the salary level test.

- DOL has noted a potential change, but likely with a cap at 10% of the standard weekly salary level.
- Thus, if \$970 per week, then only \$97 per week could be from the incentive and nondiscretionary bonuses.
- May also require the other compensation to be paid more frequently.

Implications and Concerns

Misclassifying employees as exempt can lead to extensive financial consequences.

Both the DOL, IRS and state agencies are working collectively to claim down on the misclassification of employees as independent contractors.

DOL stated “Most workers are employees under the FLSA”

The EDD is actively engaging audits of companies reporting Independent Contractors.

The EDD also shares the presumption that everyone is an employee.

DOL Clarification of IC

On July 15, 2015 the DOL released guidance related to properly classifying employees and ICs.

1. Whether the work is integral to the employer's business.
2. Whether worker's managerial skills affects the opportunity for profit or loss.
3. Relative investment (investments in tools/equipment doesn't satisfy).
4. Skills, judgment, initiative...and skills to run independent business operations.
5. Duration and type of relationship.
6. Control test.

2016 Passed: 3 Part LA County

Part 1: Los Angeles Minimum Wage Increase

Applies to 10% of LA County workers in unincorporated areas

Applies to employers with 26+ employees

Effective July 1, 2016 and each July 1 after (July 1, 2017 for employers with 25 or fewer employees)

Part 2: Approved a higher “living wage” for businesses that contract with LA County.

Increases to \$9.64 per hour if they provide health insurance or \$11.84/hour if they don't.

Part 3: Wage theft enforcement

Patrolling and penalties for paying less than the minimum wage.

Job Killer Bills on the Table

AB 357 Predictable Scheduling Mandate and Predictability Pay For Food and Retail Establishments

Based upon study reflecting only 40% of employers have consistent schedules with others often providing notice of shifts less than 1 week and even up to the day.

This proposed Act would require food and retail establishments to provide employees with **two weeks' advance notice of their schedules** and additional “**predictability pay**” when the retail establishment cancels or reschedules its employees' shifts.

The bill would further require food and retail establishments to allow employees to take unpaid absences for up to **eight hours twice per year** to attend required appointments at county human services agencies.

Job Killer Bills on the Table

Changes to schedule or cancelling shifts:

1 hour pay if less than 7 days but at least 24 hours notice

2 hours pay for each shift of 4 hours or less if less than 24 hours notice

4 hours pay for each shift of 4+ hours if less than 24 hours notice

Some exceptions, but limited and related to extraordinary events

Job Killer Bills on the Table

As currently amended in the Labor Code (Section 518)

- Applies to those with 500+ employee in CA, AND
- 10 or more other such establishments in other US states, AND
- 2 or more of the following:
 - Standardized array of merchandise
 - Standardized façade
 - Standardized décor and color scheme
 - Uniform apparel
 - Standardized signage

Currently looks like it will pass (final stage; Active Bill In Floor Process)

Job Killer Bills on the Table

SB 3 Automatic Minimum Wage Increase

Raises the minimum wage to \$11 per hour by January 1, 2016 and \$13 per hour by July 1, 2017.

The results of this law would increase California's minimum wage by more than 40% over the next two years.

Increases annually based upon inflation starting 2019.

Looking like it will pass (California Senate approved June 1; moving to Assembly)

Job Killer Bills on the Table

SB 406 Expansion of California Family Rights Act

This proposed legislation would redefine “employer” under the California Family Rights Act to include all employers with at least 25 employees within 75 miles of the employee’s worksite instead of the already restrictive number being set at least 50 employees within a 75-mile radius.

This is significant as it currently mirrors the federal FMLA that has a 50 employees requirement.

Currently appears that it will pass (committee passed 6/25)

Job Killer Bills on the Table

SB 563 Increase in Workers' Compensation Costs

The bill would require employers to file with the administrative director methods of compensation and any incentive payments contingent upon the approval, modification, or denial of a claim for an individual or entity providing services pursuant to the utilization review process.

This is moving slowly; may not pass in it's current state

Job Killer Bills on the Table

AB 465 Barring Mandatory Arbitration Agreements

This bill would prohibit any person from requiring another person, as a condition of employment, to agree to the waiver of any legal right, penalty, forum, or procedure for any employment law violations.

It would prohibit a person from threatening, retaliating against, or discriminating against another person based on a refusal to agree to such waiver, and would provide that any such waiver required from an employee or potential employee as a condition of employment or continued employment is unconscionable, against public policy, and unenforceable.

It would require that any waiver of a person's employment rights, not prohibited by state or federal law, be knowing and voluntary and in writing, and expressly not made as a condition of employment.

Job Killer Bills on the Table

AB 465 Barring Mandatory Arbitration Agreements

It would provide that a person seeking to enforce a waiver has the burden of proof to show that the waiver was knowing and voluntary.

The bill would apply to any waiver agreement entered into on or after January 1, 2016, and would impose a \$10,000 penalty against the employer for each violation of its provisions, with the penalty moneys and reasonable attorney's fees awarded to the prevailing claimant.

This is moving through; in light of significant opposition and the recent Iskarian case, there is potential it will pass.

Summary: Biggest Impact Areas

Minimum Wage...January 1, 2016 will see a state minimum of no less than \$10/hour, with the realistic chance of it being \$11/hour.

For some LA County employers, if \$10/hour prevails at the state level, they will be subject to the increase to \$10.50 July 1, 2016.

Minimum Salary (Exempt)...the chances of the DOL finalizing the \$50,440 minimum annual salary is very real. This will exceed and preempt the CA minimum.

Summary: Biggest Impact Areas

Mandatory Arbitration Agreements...these have already been under fire and the Iskarian decision has turned this area upside down for CA employers. The loss of mandatory arbitration leaves employers with 2 options...mutual arbitration or none.

CFRA...expanding this to employers with 25+ employees (down from 50) will likely place significant pressure on employers as they will now need to provide 12 weeks of protected leave to eligible employees.

Litigation Concerns

Paid Sick Leave

Wrong rate of pay, notices, paystubs...\$-\$\$

Misclassification of Independent Contractors

IRS and EDD penalties, benefits, taxes, damages...\$\$\$\$\$

Misclassification of Exempt Employees

Overtime, meal & break periods, 3/4 years, class actions...\$\$\$\$-\$\$\$\$\$

Exposure to Lawsuits in State and Federal Courts

Increased litigation costs, potential higher ceilings for damages, juries...\$\$\$\$\$

THANKS FOR ATTENDING

Today's webinar materials and recorded session will be available on our website within 24 hours. You can find them at www.higheruphr.com, Webinars & Training Tab, Past Webinars Link.

We will keep you informed of the advances of these and other laws as they roll out. Look for updates at www.higheruphr.com or in our monthly BPSC Blast.

Need assistance with evaluating your exempt employees and Independent Contractors? Looking for strategies to work through the pending laws? Give us a call at 661.360.2595/661.621.3662 or email us at Carlyle@bpscllc.com.