The BPSC Blast

HR, Compliance, & Employment Law for the California Employers
September 2015

Preparing for the Impact of the Department of Labor's Proposed 2016 Salary Increase

With the U.S. Department of Labor's proposed increase of the minimum salary to $50,440 for exempt employees hanging in the balance, it is important that employers begin to understand the nature of exemption. The Business & People Strategy Consulting Group will be breaking down California Exemptions in a 4 part series.

To begin to understand the nature of "exemption" it is important to clearly define some associated terms.

- An **"exempt employee"** is one who is paid a set salary, is not entitled to receive overtime pay, who meets specific criteria for exemption under the prevailing state or federal law, and who meets the minimum annual salary threshold.
- A "**non-exempt employee**" on the other hand, is one who is paid by the hour and is entitled to overtime pay (also double-time pay in California). Non-exempt employees are also subject to specific CA laws related to breaks, meal periods, and other areas of employment.
- A **"salaried employee"** is often confusing and associated with exempt employees. Salaried employees are those who are paid a set salary and can be either exempt or non-exempt. Thus, a salaried employee who is entitled to receive overtime, meal periods, breaks, etc. would not have to meet the criteria or minimum salary for an exempt employee.

California essentially has six exempt classes for employees including:

1. Executive
2. Administrative
3. Professional
4. Computer Professional
5. Commissioned Inside Sales
6. Outside Sales

Exempt employees are required to receive a minimum salary per year, regardless of the number of hours they work per week. In California:

- Executive, Administrative and Professional exempt employees must be paid no less than two times the state minimum wage. For 2015, the minimum wage is $9.00 per hour, thus the calculation is: ($9.00 X 2) X 2,080 hours = $37,440 ($720 per week).
- Computer Professional exempt employees must be paid no less than $85,981.40 per year ($1,653.49 per week).
- Commissioned Inside Sales exempt employees must be paid no less than 1.5 times the state minimum wage (with over 50% of their compensation being commissions).

Why are these numbers important?

- California is facing a minimum wage increase between $10.00-$11.00 per hour in 2016 (SB3 pending to increase to $11 per hour).
- The US DOL proposal is set to establish a minimum annual salary for exempt employees at $50,440.
- If the US DOL proposal passes, California's minimum wage application won't matter, as the federal law will prevail.
- If the US DOL proposal doesn't pass or passes with a lower minimum threshold, the California

(continued from Page 1) minimum wage could potentially come into play (with the threshold landing between $41,600 to $45,760 per year).

CRITICAL NOTE: If you are treating an employee as exempt and they are being paid less than the minimum threshold, exemption will be compromised and employers could be subject to back overtime pay, meal and rest period violation penalties, waiting period penalties, and other fines.

Next Month: Executive Exemption

Update on the California Job Killer Bills

The Good…These seem to have lost their steam and may not pass:

1. **SB563: Increase to CA Workers' Compensation Premiums**
   Held in the Senate and under submission.
2. **AB357: Predictable Scheduling Mandate**
   Ordered to inactive file in the Assembly

The Bad…These seem to be continuing towards being passed:

1. **SB3: Increase the State Minimum Wage to $11.00 in 2016 and $13.00 in 2017**
   Currently in the Assembly; Do-Pass and re-refer to Committee on Appropriations.
2. **SB406: Amend CFRA to apply to employers with 25+ employees (from current 50)**
   Currently in Assembly; Ordered to third reading.
3. **AB465: Barring mandatory arbitration agreements**
   This has passed the Senate and Assembly and was presented to Governor Brown September 3

Monthly Employment Law Quiz August 2015 Answers

1. Yes.

2. The employee is potentially eligible for Pregnancy Disability Leave (PDL). PDL can be up to 17 1/3 weeks of protected leave, with the potential to be extended under disability laws in some instances.

3. No. Although an employer can terminate an employee on a protected leave of absence in some very specific situations, they cannot terminate the employee going out on PDL due to her status as a newly hired employee.

Monthly Employment Law Quiz

1. Can an exempt employee's pay in California be reduced?

2. If so, when is making deductions permissible?

3. Can an employee's final paycheck be held if they haven't returned company property?

Free Webinar Series

Looking for the latest in employment laws and HR practices that impact California employers? Join us every other Wednesday at 10:00AM for our Free Webinar Series. To learn more about future topics, to view past webinars and materials or to register for one of the event, please visit www.bpscllc.com/training--webinars.html