

## THE BROAD IMPACT FROM THE RECENT MINIMUM WAGE INCREASE

As you are likely aware, California has increased state-wide its minimum wage from \$9 per hour to \$10 per hour effective January 1, 2016. Mr. Richard Fader of Ft. Lee, NJ asked me if the obligation to pay minimum wage can be ignored by any agreement between the employer and employee. In a word: “No!”

Importantly, all employers must look closely all their compensation practices that may be affected by the minimum wage increase. As is often the case when a law such as minimum wages changes, it triggers changes to a variety of related laws. The following is an example of compensations practices affected by the increase in the minimum wage:

- Posted Notice Requirements Of The New Laws: In California, all employers must meet workplace posting obligations. Workplace postings are usually available at no cost from the requiring agency. The Department of Industrial Relations (see, <http://www.dir.ca.gov/wpnodb.html>) requires employers to post information related to wages, hours and working conditions in an area frequented by employees where it may be easily read during the workday. Mandatory minimum wage postings, itemized wage statements, and wage notices will all be affected.
- SUB-MINIMUM WAGE INCREASE: While there is no distinction between adults and minors when it comes to paying the minimum wage, a limited exception exists for “learners,” but that exception is not dependent on age. “Learners” are employees who have no previous similar or related experience in the occupation. California’s Wage Orders permit you to pay learners 85 percent of the minimum wage, rounded to the nearest nickel. The sub-minimum wage to be paid shall only apply to the first 160 hours of work, after which the employee must be paid at least minimum wage. The sub-minimum wage rate increased to \$8.50 per hour (from \$7.65 per hour) effective January 1, 2016. Federal and state laws provide different definitions of learners. California employers must be careful to comply with both federal and state sub-minimum wage requirements and give employees the benefit of whichever law is more favorable to them.
- OVERTIME RATES OF PAY: Employees who work for minimum wage and perform work that qualifies for overtime wages must now be paid \$15 per hour for time and one-half (previously \$13.50 per hour) or \$20 per hour for double-time (previously \$18 per hour).
- EXEMPT/NONEXEMPT CLASSIFICATIONS: Validly exempt employees in California generally must earn a minimum monthly salary of no less than two times the state minimum wage for full-time employment. With the minimum wage increase, employees must earn a salary of \$41,600 per year (or \$800 per week) to qualify as exempt

employees (in addition to satisfying a host of other requirements not discussed in this column).

- Commission-Based Employees: A commissioned employee can receive a sum of money that is intended as an advance, draw or guarantee against the employee's expected commission earnings. In California, employers must pay these sums at least twice per month. If an employee receives a draw against commissions to be earned at a future date, the "draw" must be equal to at least the minimum wage and overtime due to the employee for each pay period (unless the employee is otherwise determined to be a legally "exempt" employee).
- TOOLS/EQUIPMENT: When an employer requires that employees use certain tools or equipment or when the tools or equipment are necessary to perform the job, the employer must provide and maintain the tools or equipment. However, employees whose wages are at least two times the minimum wage (*i.e.*, no less than \$20) can be required to provide and maintain hand tools and equipment customarily required by the trade or craft in which they work.

The California Chamber of Commerce offers the following "Best Practices":

- ✓ Display a poster that includes the current official Minimum Wage Order (MW-2014).
- ✓ Update any necessary payroll documentation.
- ✓ Review exempt classifications to make sure that the employees will still meet the minimum salary requirements on January 1, 2016.
- ✓ Provide revised itemized wage statements in a timely manner when wages are paid and ensure the statements accurately reflect the new minimum wage increase.
- ✓ Provide employees affected by the minimum wage increase with an appropriate wage notice showing the change in the rate of pay, if required.
- ✓ Adjust any meal or lodging credits to meet the new minimum wage obligation.
- ✓ Review commissioned employee arrangements to make certain that any draws against future commissions use the new minimum wage rate as a basis.
- ✓ Confirm that those employees who are required to provide and maintain their own hand tools and equipment earn at least two times the minimum wage.
- ✓ If you use the "learner" rate, ensure that you follow the strict guidelines for when you can pay the lower rate and use the appropriate rate calculation. Keep accurate records of time worked; after the employee reaches 160 hours of work, you may not pay the subminimum wage to the employee.
- ✓ Remember that local ordinances may affect your minimum wage obligations. For example, San Francisco currently requires a minimum wage of \$12.25 per hour and San José currently requires a minimum wage of \$10.30 per hour. Note, however, that

exempt/nonexempt classification is based on the state minimum wage, not local ordinances.

The contents of this column are not intended to be a complete summary of the changes resulting from the minimum wage increase. Rather, this list is intended to alert you to the broad impact of the changes in California's minimum wage. Because of the complexity of these changes, it is recommended that all employers consult with experienced labor and employment counsel to ensure that all pay policies and practices are in compliance with the applicable minimum wage laws.