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Employment Law Bulletin

November 2016

The "Silver Lining" to Raising Exempt Employee Salaries to Meet the New Federal "Minimum Salary" - Deadline December 1

California employers have just a few more weeks to increase their exempt employee salaries to the new federal minimum of \$47,476/year, or reclassify those employees as non-exempt, making them overtime eligible. Although raising the minimum salary for exempt employees means a financial detriment, this is a rare opportunity for employers to correct prior misclassification errors by December 1 without raising a red flag. Here's why.

To be exempt or "ineligible" for overtime, the position must meet both a "salary test" and a "duties test." While the salary test is easy to analyze (the employee either does or doesn't make the minimum salary), the "duties test" relies on many factors and can be difficult to apply. The result – many employers have unknowingly misclassified their employees as ineligible for overtime. Since the employer's innocent mistake is not a defense to an employee claim, misclassification mistakes can be very costly. Imagine just one "exempt" employee who worked 10 hour days six days a week for \$50,000/year (meeting the minimum salary test under the new law), but who failed to spend more than half his/her time solely performing exempt duties (more than 30 hours/week under this example). The employer is liable for unpaid pay overtime at the rate of approximately \$36/hour going back three years. Even if the employee took two weeks of vacation each year, that's \$108,000, plus interest – and if the employee no longer works for the employer, add penalties!

Employers who discover a misclassification error now can take advantage of the national attention on the new salary requirement and reclassify positions as nonexempt (overtime eligible) by December 1. While reclassification to correct a prior error does not preclude a claim for past unpaid overtime, taking corrective action by December 1 may allow employers to fly under the radar.

We are here to help you with your exemption analysis and to answer your questions. If you're not sure if your employees are properly classified as exempt, please give us a call.

For a complete discussion of the new federal minimum salary requirement, please see our August 2016 Employment Law Bulletin at www.smlaw.com.

Paid Time Off to Vote – Do you know your obligations?

As Election Day approaches, employers may face requests from their employees for paid time off to vote. Under California law, employees are eligible to take time off with pay for voting in statewide elections only if they do not have a sufficient amount of time outside of working hours to vote. The intent of the law is to provide an opportunity to vote for employees who would not otherwise be able to do so because of the working hours of their shift.

Keep in mind that polls are open from 7:00 a.m. to 8:00 p.m., so most employees will have ample time outside of their working hours to vote. In the event that an employee qualifies for voting leave, the employee must give the employer at least two days advance notice if time off is needed to vote. Further, while the employee must be given as much time as he or she needs to vote, only a maximum of two hours must be paid, and if voting takes less than two hours, they must return to work. Employers may also require employees to take the time off at the beginning or end of the employee's shift.

Employers are required to post a notice to employees advising them of the provisions for taking paid voting leave at least 10 days prior to the election. Your labor law poster likely includes this posting, but if it does not, notices are available for download at <http://www.sos.ca.gov/elections/time-vote-notices>.

New Law on Single User Workplace Toilet Facilities

For those employers who have or are considering single-user toilet facilities for its diverse workforce, note that all single-user toilet facilities must be identified as all-gender toilet facilities beginning March 1, 2017. A "single-user toilet facility" means a toilet facility with no more than one toilet and one urinal with a locking mechanism controlled by the user.

Previous SMT Employment Law Bulletins

Have you missed one of our prior SMT Employment Law Bulletins? All editions are available on our website at www.smlaw.com.

Save-the-Date for SMT's Annual Employment Law Update

January 13, 2017

Morning Seminar 8:30 - 10:30 am

Afternoon Seminar 1:30 – 3:30 pm

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