
LEGAL ALERT

New Year Brings Automatic Increases To California Payroll Costs

Effective January 1, 2008, the California Minimum Wage will increase from \$7.50 to **\$8.00 per hour**, a 6.7% increase. This increase will trigger several automatic changes in your minimum-compensation requirements.

Automatic Increases Resulting From Minimum Wage Increase

With the increase of the minimum wage on January 1, 2008, employers should consider all payroll and wage-hour consequences, such as the following:

Overtime Rates

The overtime rates for minimum-wage earners will automatically increase, whether at time-and-a-half (\$12.00 per hour) or double time (\$16.00 per hour) rates.

Tool-Wage Rates

Employees required to use their own tools as a condition of employment generally must be paid twice the state minimum wage, or the employer must compensate the employees for the cost of their tools. This minimum "tool rate" will increase to \$16.00 per hour.

White Collar Salaried Exemptions

In addition to satisfying all other requirements, employees classified as salaried exempt must be paid a fixed weekly salary that is no less than two times the state minimum wage for full-time employment, defined as a 40-hour week. With the minimum wage increase, this will be \$640.00 per week (40 x \$16.00), which equates to \$2,773.34 per month, or \$33,280.00 annually. If salaries currently set at the minimum threshold are not increased to the new minimum level, employees otherwise exempt pursuant to the salaried exemptions will become non-exempt.

Split-Shift Premium

The split-shift premium, which is payable at one hour at the state minimum wage to employees working a "split shift," or two separate work periods the same day separated by a gap in time other than a bona-fide meal period, automatically goes up.

Meal and Lodging Credits

The maximum amounts of meal and lodging paid by an employer that can be credited against an employee's earned minimum wage will increase by the same percentage that the minimum wage increases (6.7%).

Collective Bargaining Opt-Out

For all Wage Orders except 14 and 15, employees covered by a valid collective bargaining agreement will be exempt from state overtime laws if the agreement expressly provides for the wages, hours of work, and working conditions, *and* if the CBA provides 1) premium wage rates for all overtime hours worked and 2) a regular hourly rate of pay not less than 30% more than the state minimum wage. This minimum regular hourly rate of pay will increase to \$10.40 (1.3 x \$8.00).

Commissioned-Salesperson Exemption Threshold

Sales persons primarily engaged in sales and whose commissions comprise more than 50% of their total compensation will be exempt from overtime if their hourly rate based on their total weekly earnings exceeds one-and-a-half times the state minimum wage, or more than \$12.00 per hour.

Outside salespersons who customarily and regularly work more than half of their working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services, or use of facilities, will remain exempt from minimum wage and overtime requirements.



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Drastic Reduction to Minimum Hourly Rate for Computer Professional Exemption

One change effective January 1, 2008 is not related to the minimum wage increase. Highly skilled computer professionals whose specialized duties qualify them for the computer professional overtime exemption must also satisfy a minimum hourly rate to meet the test for the exemption, which applies even if an employee is paid a salary (salary divided by hours worked must equal or exceed the minimum hourly rate).

Although the rate currently is \$49.77 (which must be paid for every hour of work performed), recent legislation taking effect on January 1, 2008, greatly reduces the rate to \$36.00 per hour. The intent is to save and create jobs in a diminishing market due to a trend of outsourcing and job relocations affecting these kinds of positions.

Employer Action Needed

Employers should revise and implement compensation plans addressing the changes before the start of the new year. For example, because compensation rates may change exemption thresholds, you should audit your positions to determine whether reclassification is required. These statutory changes to compensation may also require you to revise current compensation plans or policies based on the minimum wage or the computer professional rate (now greatly reduced).

Finally, the litigation climate and several landmark appellate decisions handed down during 2007 may impact or subject employers to potential liability with regard to commission plans and incentive agreements, arbitration agreements, and meal and rest period compliance. To begin fresh in 2008, employers should audit their compensation plans, employment agreements, and policies potentially impacted by these issues, as well.

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This Legal Alert provides a brief summary of the important aspects of this new legislation. It is not intended to be, nor should it be construed as, legal advice for any particular fact situation.

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