



**FREEMAN FREEMAN &
SMILEY, LLP**

**EMPLOYMENT LAW
BULLETIN**

January 7, 2016

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THE NEW YEAR BRINGS NEW CALIFORNIA EMPLOYMENT LAWS

(Part Two)

We have previously reviewed the following wage and hour laws effective January 1, 2016:

1. The greatly enhanced enforcement power of the Labor Commissioner with respect to wage claims. To see this discussion, [click here](#).
2. The limited opportunity to correct paystub violations. To see this discussion, [click here](#).
3. California's Fair Pay Act, requiring equal pay to employees of both sexes for "substantially similar work." To see this discussion, [click here](#).

In this discussion, we review other changes to California's wage and hour laws, effective January 1, 2016, which are:

1. The minimum wage increased to \$10.00 per hour, also affecting other wage requirements.
2. The piece-rate compensation requirements have changed to require employers to pay employees who are on piece rate compensation system a separate hourly rate for non-productive time.
3. California-based professional sports teams who use cheerleaders during their exhibitions, events or games must classify them as employees.

Minimum Wage Increase

Effective January 1, 2016, the minimum wage increased from \$9.00 per hour to \$10.00 per hour. Not only does this impact the minimum hourly rate payable to non-exempt employees, it also has the following impacts:

- a. An increase in the minimum wage automatically increases the overtime amounts payable.
- b. Since salaried exempt employees must be paid at least twice the minimum wage, the minimum salary for exempt status automatically increases to \$800/week or \$41,600. If the salary is lower than that, exempt status is lost and the employee must be treated like an hourly employee.
- c. The requirement that employees provide their own hand tools is contingent on the employee being paid at least twice the minimum wage. Therefore, an employer who wants to require employees to do this must pay them at least \$20.00 per hour.



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- d. Commissioned overtime-exempt employees in retail and service establishments (businesses covered by IWC Wage Orders 4 and 7) are also affected, since this status requires that employees be paid more than twice the minimum wage as a base (now, \$15.01 per hour) and over one-half of that amount must consist of commissions. Therefore, commissions may have to be increased to retain this status.
- e. Any change in compensation requires the employer to notify employees in writing of the change within seven (7) calendar days from the time of the change. This means that the notification must be provided by January 7, 2016.
- f. Meal and lodging credits are affected. For example, IWC Wage Orders 1 through 16 increase the amount that may be credited toward lodging as follows: room occupied alone (\$47.03 per week); room shared (\$38.82 per week); apartment (2/3 of the ordinary rental value, not to exceed \$564.81 per month); where a couple are both employed by the employer (2/3 of the ordinary rental value not to exceed \$835.49 per month). The amount that may be credited toward meals is increased in these Wage Orders as follows: breakfast (\$3.62); lunch (\$4.97); dinner (\$6.68).
- g. Unionized employees can be affected in a variety of ways where the employer is using an exemption from various aspects of the wage laws by reason of a collective bargaining agreement that meets certain requirements. The requirements usually include an hourly rate that is at least 30% more than the minimum wage (therefore, at least \$13.00 per hour). This applies to exemptions with regard to paid sick leave and overtime.

Computer Professionals Overtime Exemption Minimum Rate Increase

Labor Code section 515 provides that certain computer software employees are exempt from the overtime requirements of section 510 if certain criteria are met. One of the criteria is a minimum hourly rate of pay. This minimum rate is adjusted every year to be effective on January 1. The new minimum hourly rate of pay is now increased to \$41.85, the minimum monthly salary exemption is increased to \$7,265.43, and the minimum annual salary exemption is increased to \$87,185.14.

Piece-Rate Compensation Requirements

AB 1513 added Labor Code section 226.2. It requires employers that pay employees on a piece-rate basis to separately and additionally pay for rest and recovery breaks and "other non-productive time," i.e., time under the control of the employer that is not directly related to the activity being compensated on a piece-rate basis. This applies, for example, to time that the employee may be waiting (under the control of the employer) for the next piece to become available to be worked on or doing non-piece-rate tasks. The amount paid for rest and recovery periods must be at a regular hourly rate that is no less than the higher of (a) an average hourly rate determined by dividing the total compensation for the workweek (exclusive of compensation for rest and recovery periods and any premium compensation for overtime), by the total hours



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worked during the workweek, exclusive of rest and recovery periods, or (b) the applicable minimum wage. An employer that, in addition to paying any piece-rate compensation, pays an hourly rate of at least the applicable minimum wage or all hours worked is deemed to be in compliance with the preceding requirement.

The itemized statement provided to employees compensated on a piece-rate basis must also separately state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and the total hours of other nonproductive time, as specified, the rate of compensation, and the gross wages paid for that time during the pay period.

The law has a number of additional details that employers who pay on a piece-rate basis should become familiar with.

If there is a silver lining to this new law, it is that by clarifying the definition of “other non-productive time” it should eliminate claims that certain activities included and related to the employee’s productive time should be separately compensated. There are several options for handling “other non-productive time” on a going-forward basis. The law also has a “safe harbor” provision in the form of an affirmative defense to a claim for recover of wages, damages, liquidated damages, statutory or civil penalties for employers who were not previously in compliance with the failure to timely pay the employee the compensation due for rest and recovery periods and other non-productive time for time periods prior to and including December 31, 2015; to take advantage of this provision, an employer must meet the statutory requirements by December 15, 2016.

Meal Period Waivers in the Health Care Industry

SB 327 (which took effect October 5, 2015) amended Labor Code section 516 to confirm that health care industry employers can allow employees to voluntarily waive one of their two meal periods, even when an employee’s shift exceeds 12 hours.

Permissible Garnishment Amount Reduced

SB 501 (effective July 1, 2016) amended Code of Civil Procedure section 706.050 to reduce the amount of weekly disposable earnings that may be garnished pursuant to a withholding order. Under the amendment, the amount garnished cannot exceed the lesser of 25% of the individual’s weekly disposable earnings or 50% of the amount by which the individual’s disposable earnings for the week exceed 40 times the state minimum hourly wage (or applicable minimum hourly wage, if higher) in effect at the time the earnings are payable.

Enforcement of Local Minimum Wage and Overtime Laws and Expense Reimbursements

Many local jurisdictions have enacted their own minimum wage and overtime requirements. AB 970 amends Labor Code sections 558, 1197, 1197.1, and 2802 to allow the Labor



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Commissioner to investigate and enforce these laws and to issue citations and penalties where employers fail to reimburse employees for employer-required expenses.

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