



**FREEMAN FREEMAN &  
SMILEY, LLP**

**EMPLOYMENT LAW  
BULLETIN**

**December 22, 2016**

**[Labor & Employment](#)**

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## **New Year, New Employment Laws for 2017**

The California legislature has once again been busy making life more complicated for employers who have California employees. Here is a summary of the new laws that may affect you. Except as otherwise indicated, these laws become effective on January 1, 2017.

Among other things, the new laws increase the minimum wage for non-exempt employees and the salary requirement for exempt employees, clarify the paystub requirements for exempt employees, expand the requirements of the Fair Pay Act to include race and ethnicity, and limit the ability to rely on prior compensation in setting wages. They also impose new restrictions with respect to smoking, immigration and criminal record-related questions, and arbitration agreements. A change to the definition of “employee” for purposes of workers’ compensation significantly limits those directors and officers who can be excluded from coverage.

### **State Minimum Wage Increases**

The new state minimum wage for businesses with more than 25 employees increases from \$10.00/hour to \$10.50/hour. Besides raising the required hourly rate for non-exempt employees, this has the following additional effects for employers subject to this higher rate:

- a) the minimum salary for exempt status increases to \$43,680/year;
- b) the minimum hourly rate for employees who are required to supply their own hand tools that are routinely required by the employee’s trade increases to \$21.00 (twice the minimum wage);
- c) any employee who now becomes non-exempt due to not meeting the new salary requirements must be given a new Wage Theft Prevention form and all of the hourly requirements such as tracking time, and meal and rest breaks apply.

The computer software employee’s minimum hourly rate of pay exemption increases from \$41.85 to \$42.35, the minimum monthly salary exemption increases from \$7,265.43 to \$7,352.62, and the minimum annual salary exemption increases from \$87,185.14 to \$88,231.36.



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**EDD Filings**

Employers with 10 or more employees must electronically file their employment tax returns, reports, and payments to the Employment Development Department. Employers with fewer than 10 employees will have to start doing this on January 1, 2018.

**Clarification of Paystubs for Exempt Employees**

Employers are not required to include in itemized wage statements the total number of work hours for exempt employees, provided the employee is paid on a salary basis.

**Immigration Protections Expanded**

Under new Labor Code section 1019.1, it is an unfair immigration practice to any of the following in connection with verifying authorization to work: (a) request more or different documents than required under federal law (I-9 procedures) to verify work authorization; (b) refuse to honor documents tendered that on their face reasonably appear to be genuine; (c) refuse to honor documents or work authorization based on the specific status or term that accompanies the authorization to work; or (d) attempt to reinvestigate or re-verify an incumbent employee's work authorization using an unfair immigration-related practice.

**Increased Penalties for Minimum Wage Violations**

Prior to appealing a citation by the Labor Commissioner against the employer for violation of wage and hour laws, the employer must post a bond with the Labor Commissioner in an amount equal to the unpaid wages assessed under the Labor Commissioner's citation (excluding penalties). The bond must be in favor of the employee and will be forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings.

**Expansion of Fair Pay Act**

Labor Code section 1197.5 has been expanded to require equal pay for substantially equal work not only based on gender, but on race and ethnicity. It also adds that prior salary does not, by itself, justify any disparity in compensation.



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**Bathroom Bill**

Effective March 1, 2017, businesses cannot label any “single-user toilet facility” (defined as a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user) as either male or female.

**Restrictions on Arbitration Agreements**

Under the amendments to Labor Code section 925, (a) any party to an arbitration proceeding has the right to have a certified shorthand reporter transcribe any deposition, proceeding, or hearing as the official record, and (b) an employer cannot require a California employee to arbitrate or litigate their claims in other states or require arbitrators to apply other state’s laws.

**Domestic Violence Leave Notification**

Employers with 25 or more employees must notify employees of the right to take protected time off for domestic violence, sexual assault or stalking. This notification must occur upon hire and at any time thereafter upon request. The Labor Commissioner is not required to develop and publish a form for this purpose until July 1, 2017; by that date, employers must give the required notice.

**Limitation on Asking About Juvenile Convictions**

Labor Code section 432.7 has been amended to provide that employers may no longer ask about or consider information relating to arrests, convictions, or other proceedings that occurred while an applicant or employee was subject to the process and jurisdiction of juvenile court. This means that most application forms will have to be quickly revised to be compliant as of January 1.

**Expanded Prohibitions on Smoking**

The prohibitions have been extended to smoking tobacco products in all enclosed places of employment to all employers of any size if the business allows clients or other non-employees access to the workplace, including a place of employment where the owner-operator is the only employee. “Enclosed space” includes covered parking lots, lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building. “Place of



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employment” does not include: (a) 20% of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment; (b) retail or wholesale tobacco shops and private smokers’ lounges; (c) cabs of motortrucks when there isn’t a non-smoking employee present; (d) theatrical production sites, if smoking is an integral part of the story in the theatrical production; (e) medical research or treatment sites, if smoking is integral to the research and treatment being conducted; (f) private residences, except for licensed family day care homes; (g) patient smoking areas in long-term health care facilities.

**Distracted Driving**

When driving – including driving as part of one’s job duties – the driver is limited to simple actions and only if the phone is mounted in the vehicle.

**New Limits on Excludable Employees for Workers’ Compensation**

Officers, directors and partners are required to be covered under the employer’s workers’ compensation policy unless they meet a narrower definition of excluded employee. For private and quasi-public companies only officers and directors who own at least 15% of the issued and outstanding stock of the company or an individual who is a general partner of a partnership or a managing member of a limited liability company are eligible to be excluded. Even if they meet the definition, they are not excluded unless they sign a waiver under penalty of perjury and file it with the workers’ compensation carrier who must also accept it.

**State Agency Travel Mandates Restricted**

State agencies cannot require employees to travel to states that have laws permitting discrimination on the basis of sexual orientation, gender identity, or gender. State agency employees cannot be reimbursed for travel to those states. Currently, travel to North Carolina, Tennessee, and Mississippi is affected.

**Don’t Forget the Myriad Local Ordinances**

Many local jurisdictions have started to enact their own employment requirements that have higher wage requirements, more paid sick leave, and other kinds of wage or benefit requirements. Therefore, employers need to stay informed about all of these and ensure compliance. Many of these laws affect employers who are located outside of the jurisdiction but



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whose employees do even minimal work inside the jurisdiction. This patchwork of laws is an onerous burden to employers, but one that is likely to do nothing but expand and become more complicated.

**More to Come!**

There were also a number of laws that, although effective January 1, 2017, do not have to be implemented right away. For example, the Government Code has been amended to require employers without private retirement plans to develop programs to enable employees to participate in the state's new state-sponsored retirement program, but that program has not yet been developed. The overtime exemptions for agricultural workers will also start to be phased out, but not during 2017. While employers will be required to comply with heat illness regulations for indoor as well as outdoor employees, the regulations covering indoor workers have not yet been developed (although Cal/OSHA has successfully taken the position that Injury and Illness Prevention Programs must effectively address the hazard of indoor heat).

Written By [Teresa R. Tracy](#), Partner.

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