

## California Passes Increase to State Minimum Wage; What Else is Affected?

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California Governor Jerry Brown on September 25, 2013, signed into law a bill that increases the state's hourly minimum wage rate from \$8.00 an hour up to \$10.00 an hour by January 1, 2016. The new law (AB 10) amends Section 1182.12 of the California Labor Code and does not automatically increase the wage rate annually based on inflation. The rate increase will take effect in two stages: a \$1.00 increase on July 1, 2014, to \$9.00 an hour, and another \$1.00 increase on January 1, 2016, to \$10.00 an hour. The last time California increased its minimum wage was on January 1, 2007.

AB 10 states:

Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.

Beyond the significant impact the wage increases will have on businesses in California, the change has a domino effect on other California employment compliance areas that are linked to the state minimum wage

### Other Compliance Areas

Following are some of the other key effects the new law will have for employers.

#### *Exempt Employees*

Private sector employers with exempt employees in California must determine whether they will continue in compliance. For employees to be properly classified as exempt under the Executive, Administrative, and Professional Exemptions of many California Wage Orders, the employee must earn a monthly salary equivalent to no less than two times the state minimum wage and meet the duty test under the exemption. Effective July 1, 2014, the minimum salary test for the California Executive, Administrative, and Professional Exemptions will increase from \$33,280 to \$37,440 annually. Employers should review whether their exempt employees will still meet the salary requirement by July 1, 2014, and again, by January 1, 2016.

#### *Collective Bargaining Agreements*

Employers with collective bargaining agreements in California should determine whether they will remain in compliance with the rate change. Under most California Wage Orders, employers and unions are permitted to negotiate overtime premiums different from those required by the applicable Wage Order, so long as their employees are covered by a valid collective bargaining agreement designating wages, hours and working conditions and the employees' regular hourly rate of pay is not less than *30 percent more than the state minimum wage*. Employers should determine whether their union contracts or other procedures are affected.

#### *Commission Exemption – Wage Orders 4 and 7*

Employers subject to California Wage Orders 4 and 7 also should review their practices where the employer is relying on the commission overtime exemption (Section 3). Employers with employees exempt from overtime provisions based on the commission exemption must determine whether the employees will still qualify. Employees whose earnings exceed one and one-half times the minimum wage and more than half their compensation represents commissions could be exempt from the overtime provisions under Section 3 of

California Wage Orders 4 and 7. Employer would need to ensure these individuals earn at least one and one-half times the new state minimum wage.

#### *Tools or Equipment – Section 9 of Wage Order*

Employers who require employees to provide their own tools or equipment based on provisions of the California Wage Order may be affected. Generally, when tools or equipment are required by the employer or are necessary to the performance of a job, they must be provided and maintained by the employer. However, employees who earn at least two times the state minimum wage can be required to provide and maintain their own hand tools and equipment customarily required by the trade or craft under Section 9 under most California Wage Orders. If employers are taking advantage of this limited provision, they should ensure they are paying employees twice the new state minimum wage.

#### *Voluntary Crediting Agreements*

Employers with voluntary written agreements with employees for crediting meals or lodging against the employer's minimum wage obligation should adjust their crediting accordingly under Section 10 of most California Wage Orders.

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Jackson Lewis attorneys are available to answer questions about this or other workplace developments. Please contact Jonathan Siegel, SiegelJ@jacksonlewis.com, Scott Ruygrok, Scott.Ruygrok@jacksonlewis.com, or the Jackson Lewis attorney with whom you regularly work.

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### Wage and Hour Compliance