

ENGAGING IN PARTNERSHIPS
October 16-17, 2019

“DO YOU KNOW---
WHAT YOU DON'T KNOW?

RISING MINIMUM WAGE

26 or more employees

1/1/2019	\$12.00
1/1/2020	\$13.00
1/1/2021	\$14.00
1/1/2022	\$15.00 established goal..for now!

25 or fewer employees

1/1/2019	\$11.00
1/1/2020	\$12.00
1/1/2021	\$13.00
1/1/2022	\$14.00
1/1/2023	\$15.00BUT

MINIMUM WAGE

DON'T FORGET THE IMPACT OF LOCAL ORDINANCES

ALAMEDA...BELMONT...BERKLEY..CUPERTINO..EL
CERRITO..**EMERYVILLE**..LOS ALTOS..LA..MALIBU..MILPITAS..
MT. VIEW..OAKLAND..PALO ALTO..PASADENA..
REDWOOD CITY..RICHMOND.. SAN DIEGO..SF..SAN JOSE.
SAN LEANDRO..SAN MATEO.. SANTA CLARA
SANTA MONICA..SUNNYVALE

at least as of the end of 2018

SOURCE TO KEEP UP WITH MARKET WAGE RATES

- **Go to edd.ca.gov**
 - **Under Search box, type in OES**
 - **Click on “OES Employment & Wages**
 - **Select the county you want to see**
- “OES” is Occupational Employment Statistics

OES

Never match survey data with just a title!!!

To get the details of a description from the OES

Go to edd.ca.gov

In Search box type in OES

Click on the first listing “California Occupational Guides”

Do a Keyword Search using the title you reviewed

Federal Overtime Rule

Effective 1/1/2020

- **US Dept of Labor (DOL) announced the final rules for the salary threshold for white-color exemptions from \$455 per week to \$684 (equivalent to \$35,586 per year).**
- **and raised threshold for employees who are exempt as a “Highly compensated employees” from \$100,000 to \$107,432)**
- **Also changed how to meet the threshold by allowing nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the standard salary level.**

HOWEVER!!!!!!!

- California's annual salary threshold for white-color exemptions still exceeds the new federal threshold so this new federal rule does not impact California workers.
-if you have employees working in other states....need to check.
- **New Fed increase \$455 week to \$684**
Calif 2020 increase \$960 week to \$1040 (2X min wage)

HOW DO I DETERMINE IF AN EMPLOYEE IS EXEMPT FROM OVERTIME?

- 2019 SAW A MULTI-MILLION DOLLAR SETTLEMENT AGAINST SPRINT HITTING THE HEADLINES REGARDING EXEMPT OR NON-EXEMPT CLASSIFICATIONS
- BEEN A CONFUSING ISSUE FOR A LONG TIME
- THESE VERY EXPENSIVE COURT CASES MEAN ALL OF OUR BUSINESSES SHOULD BE TAKING A LOOK REGARDING WHO IS CURRENTLY CLASSIFIED AS AN EXEMPT EMPLOYEE
- WOULD NOT HAVE TO BE PAID OVERTIME FOR DAYS OVER 8 HOURS OR WEEKS OVER 40 HOURS

INDUSTRIAL WELFARE COMMISSION ORDERS (IWC ORDER)

- THE IWC ORDERS NOT ONLY INDICATE WHO CAN BE CLASSIFIED AS EXEMPT BUT ALSO HAVE OTHER IMPORTANT LAWS SUCH AS WORK HOURS, REST AND MEAL BREAKS, SPLIT SHIFTS, ETC.
- GOOGLE “CALIFORNIA IWC” TO DETERMINE THE ORDER THAT APPLIES TO YOUR INDUSTRY
- THE IWC ORDER FOR YOUR BUSINESS MUST ALSO BE POSTED ALONG WITH OTHER REQUIRED POSTERS

CAN A STAFF PERSON ASK THEIR EMPLOYEE TO VOLUNTEER FOR A SPECIAL EVENT WITHOUT PAYING THEM OR PAYING THE APPROPRIATE OVERTIME RATE?

- FROM THE CALIFORNIA CHAMBER OF COMMERCE BOOK “ 2020 HR QUICK GUIDE...EVEN ONE FOR “SMALL BUSINESS EDITION”:

“Non-Exempt workers are typically paid an hourly rate and receive at least the minimum wage for **each hour worked.**”

California regulates non-exempt employee’s wages and hours through the Wage Order discussed earlier so this is another reason to be sure you know which IWC governs your operation

2019 LAWS

SALARY HISTORY

A 2018 LAW (AB 168) **BANNED INQUIRIES ABOUT SALARY HISTORY AND REQUIRED EMPLOYERS TO PROVIDE PAY SCALES TO APPLICANTS UPON REQUEST.**

THE AMENDMENT FOR 2019 CLARIFIED THAT THE EMPLOYER CAN ASK ABOUT AN APPLICANT'S SALARY EXPECTATIONS.....but

SB 1343

Sexual Harassment Training

THIS NEW SEXUAL HARASSMENT TRAINING LAW WILL
APPLY TO EMPLOYERS OF 5 OR MORE

REQUIRE EMPLOYERS TO PROVIDE 2 HOURS OF TRAINING
FOR SUPERVISORS AND 1 HOUR FOR NONSUPERVISORY BY
THE END OF 2019

**HOWEVER, AUG 30 GOV NEWSOM SIGNED SB 778
EXTENDING THE TRAINING DEADLINE TO JAN 1, 2021**

- SB 778 SET DEADLINES FOR EMPLOYERS WHO HAVE TRAINED THIS YEAR OR PREVIOUS YEARS:
 - TRAINED 2019 DUE 2021
 - TRAINED 2018 DUE 2020
 - TRAINED 2017 DUE 2019

- SB 1300 STATES THAT A SINGLE ACT OF HARASSING CONDUCT CREATES A “TRIABLE ISSUE OF HOSTILE WORK ENVIRONMENT”.

BENEFIT CHANGES

MANDATORY SICK LEAVE

All employers must provide sick leave benefits even to temporary or seasonal workers.

The two basic options: **Lump Sum method** or the **Accrual method** (some variations on the accrual method)

Whichever method the employer chooses to use **has to be communicated in a written letter/policy to the employees**

or

the maximum allowed by law of 1 hour for every 30 hours worked will apply with no exceptions.

They must also give the employee the new document “**Notice to Employee**” with the appropriate box checked off regarding sick leave.

CALSAVERS

1) Employer Requirement:

All **CA employers with 5 or more employees** must either:

- Offer a qualified retirement plan of employers' choice

Or

- Register for CalSavers and facilitate for employees

2) Automatic Enrollment for Employees:

CalSavers is completely voluntary for employees, but if they don't opt-out within 30 days of notification, they will be automatically enrolled. May opt-out and back in at any time.

3) Public Private Partnership:

Professionally Managed & Advised by Ascensus (administrator), State Street Global Advisors and Newton (investments), AKF Consulting, Meketa Investment Group, and K&L Gates.

- Zero cost to the state, taxpayer, employer

REGISTRATION DEADLINES

- Employers can register AT ANY TIME but need to meet the following dates if they do not offer an employer-sponsored retirement plan

5 or more employees	June 30, 2022
50 or more employees	June 30, 2021
over 100 employees	June 30, 2020

EMPLOYERS WITH LESS THAN 5 WORKERS

- Not subject to the mandate
- No automatic enrollment of their employees
- Not required to register with CalSavers
- Individual can open an account on their own
- Employees can ask their employer to facilitate their enrollment but the employer is not required to do so.

WHO IS CALSAVERS FOR

- People employed in the State of California
- 18 years or older
- Have Social Security Number or individual payer ID number
- Employer does not offer an employee retirement plan

BENEFIT TO EMPLOYERS

- Very **easy** to facilitate
- **No fees** for Employer
- Employer **not fiduciaries**
- **Employers will not be allowed to make any employer contributions**
- All employee communications goes to the plan administrator

EMPLOYER RESPONSIBIITY

- Register by state-required deadline
- Set up an account
- Submit employee roster
- Submit employee contributions
- Contact www.calsavers.com
 - 1-855-650-6916 for employers
clientservices@calsavers.com

NEW LAWS

HERE IS WHERE “WHAT YOU DON’T KNOW....
CAN HURT YOU.

AS OF THE END OF THIS LEGISLATIVE SESSION

28 CHAMBER OPPOSED BILLS MADE IT TO THE GOVERNORS
DESK FOR APPROVAL INCLUDING TWO THE CHAMBER BILLS
LABELED “JOB KILLERS”

BRIEF OVERVIEW OF SOME IN THE LABOR AREA (RED=CHAMBER OPPOSED BILLS)

- AB 9 (REYES) EXTENDS STATUE OF LIMIIATIONS 1 TO 3 YRS CLAIMS DFEH
- AB 25 (CHAU) EXEMPTS EMPLOYEE DATE FROM CCPA-Chamber supports
- AB 51 (GONZALEZ)-PROHIBITS ARBITRATION AGREEMENTS+NEW RIGHT OF ACTION UNDER FEHA-EXPOSES EMPLOYERS TO CRIMINAL LIABILITY
- SB 142 (WIENER) SIGNIFICANT NEW LACTATION REQUIREMENTS
- SB 163 (PORTANTINO)-BENEFITS-HEALTH CARE ISSUE FOR CHILDREN AUTISM
- AB 171 (GONZALEZ) DUPLICATE SEXUAL HARASSMENT PROTECTION
- SB 218 (BRADFORD) AFFECTS FEHA ALLOWS LA ENFORCEMENT AUTHORITY
- SB 227 (LEYVA)-BENEFITS FINES VIOLATIONS NURSE-TO-PATIENT STAFFING –DUP
- AB 403 (KALRA) REQUIRES A ONE-SIDED ATTORNEY FEE TO DSLE COMPLAINT PROCESS
- AB 520 (KALRA) CREATES LIMITED DEFINITION OF THE TERM “DE MINIMIS”
- AB 589 (GONZALEZ) PROVIDES A “WORKERS BILL OF RIGHTS” REQUIREMENT
- SB 600 (PORTANTINO) –BENEFITS MANDATES FERTILITY SERVICES
- SB 707 (WIECKOWSKI) EMPLOYER HAVE PAY COST OF FEES FOR ARBITRATION
- AB 731 (KALRA)-BENEFITS IMPOSES COSTLY REVIEW HEALTH PLANS/INSURERS
- AB 744 (AGULAR) BENEFITS AFFECTS REIMBURSMENT FOR TELEHEALTH SERVICES
- AB 749 (STONE) BANS NO-REHIRE PROVISIONS IN SETTLEMENTS
- AB 1130 (Levine)-EXPANDS CCPA PRIVATE RIGHT OF ACTION-Chamber
- AB 1478 (CARRELLO) EXPANDS JOB PROTECTED LEAVE

BRIEF OVERVIEW OF SOME IN THE LABOR AREA (RED=CHAMBER OPPOSED BILLS)

- AB 1677 (Weber) Penalize Calif companies that move call centers out of country
- AB 1783 (R Rivas) Farmworkers housing restrictions regarding locations/mgt
- AB 23 (Burke) help employment-ready trained workforce in sectors with the greatest need
- SB 601 (Morrell) reduces licensing fees for bus affected by emergencies
- AB 874 (Irwin) reasonable definition of personal info provided to CCPA plus AB 1146 (Berman) also part of defining the CCPA data issue and again AB 1355 (Chau)
- As of 10/3/2019 SB 65 requires any business that produces, distributes, or sells food products containing *acrylamide* to provide a warning. Acrylamide is naturally in many foods cooked at high temps including things like baked goods, breakfast cereal, coffee, French fries,.....**10/7 CAL CHAMBER FILED A LAWSUIT TO STOP PROP 65**

CHAMBER JOB KILLERS STOPPED OR AMENDED

- AB 1066 (GONZALEZ) GRANTING UI BENEFITS TO STRIKING WORKERS

BILLS PASSED/NEW COURT CASES

- AB 1607 (Boerner Horvath) The act requires certain businesses-tailors, barbers, hair salons, dry cleaners – to post a notice of pricing for standard services in compliance with **Gender Tax Repeal Act** which precludes businesses from charging different prices for services based on gender.
- US Supreme Court in a Calif case allowed blind people to sue restaurants and similar businesses that fail to make their websites accessible to the visually impaired.

OLD AND NEW TO WATCH

2019 Court case regarding “de minimis”

AB 520 (Kalra)codifies a limited definition of the term “de minimis” on private project.

CROWN ACT Effective 1/1/2020

- Over the summer, the Calif Legislature passed the **Creating a Respectful and Open Workplace for Natural Hair (“CROWN”) Act**
- Extends protection against racial discrimination in the workplace to natural hairstyles.
- Amends the FEHA to define “race” as “inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles (includes braids, locks, twists and other unspecified hairstyles associated with race.

NEW LACTATION REQUIREMENTS

- Pending AB 142 (Wiener) significantly amends current law regarding lactation accommodations
- Effective 1/1/2019-must provide a location for lactation other than a *bathroom*, must be private and in close proximity to work area; previously was *other than a toilet stall*

WHAT SHOULD EMPLOYERS DO NOW?

REVIEW AND AMEND GROOMING AND APPEARANCE POLICIES

TRAIN MANAGERS AND HR PERSONNEL ABOUT THIS
EXPANSION AND ABOUT NONDISCRIMINATORY CONCEPTS OF
“PROFESSIONALISM” IN THE WORKPLACE

NOW....ARE YOU READY FOR THIS ONE?

INDEPENDENT CONTRACTOR STATUS

INDEPENDENT CONTRACTORS

THIS WAS A CONFUSING ISSUE EVEN PRIOR TO 2018

MULTIPLE AGENCIES INVOLVED.

SEVERAL QUESTIONS TO REVIEW TO DETERMINE

EXAMPLE, IN A WAGE CLAIM

DLSE OFTENED USED THE **6-PRONG ECONOMIC REALITIES TEST**

.....A DIFFERENT STATE AGENCY WITH THE SAME PARTIES
AND SAME FACTS MIGHT USE A DIFFERENT TEST (SUCH AS
THE CONTROL TEST

WHICH MAY RESULT IN A DIFFERENT DETERMINATION.

YOU COULD HAVE **USED IRS** FORM TO GET A DETERMINATION
BUT THAT MAY OR MAY NOT SATISFY ONE OF THESE OTHER
AGENCIES

IN APRIL 2018 THE CALIFORNIA SUPREME COURT RULED THAT THE LONG-STANDING **COMMON LAW RIGHT TO CONTROL TEST** DID NOT APPLY IN A WAGE AND HOUR CLASS ACTION LAWSUIT.

THE **COURT** ADOPTED THE ABC TEST FOR PURPOSES OF WAGE ORDERS.

UNDER THE **ABC TEST**, AN INDIVIDUAL IS PRESUMED TO BE AN EMPLOYEE, UNLESS THE COMPANY CAN PROVE **ALL OF THE FOLLOWING**:

- A WORKER IS FREE FROM CONTROL AND DIRECTION OF THE HIRING ENTITY BOTH UNDER THE CONTRACT **AND IN FACT; AND**

- B **THE WORKER PERFORMS WORK THAT IS OUTSIDE THE USUAL COURSE OF THE HIRING ENTITY'S BUSINESS; AND**

- C WORKER IS CUSTOMARILY ENGAGED IN AN INDEPENDENT ESTABLISHED TRADE, OCCUPATION OR BUSINESS OF THE SAME NATURE AS THE WORK PERFORMED.

TO MAKE IT MORE CONFUSING:

BECAUSE THIS CASE IS SPECIFIC TO CLAIMS FOR WAGE ORDER VIOLATIONS: **THE COURT DID NOT EXPRESS AN OPINION ABOUT NON-WAGE ORDER CLAIMS BUT A SECOND COURT DECISION DID**

THE “BORELLO” TEST USED IN THE PAST APPLIES TO NON-WAGE ORDER CLAIMS

HUGE IMPACT ON “GIG ECONOMY” AND INDUSTRIES WHERE IT HAS BEEN TRADITION TO HAVE INDEPENDENT CONTRACTORS

IN RESPONSE, **CAL CHAMBER** STARTED “**I’M INDEPENDENT COALITION**” TO PRESSURE NEW LEGISLATION TO MAKE IT CLEARER AND PROTECT THE ABILITY TO FREELANCE

UNIONS FOUGHT TO LEAVE THE COURT DECISION AS IT STANDS AND MAKE IC EMPLOYEES; GIG ECONOMY WORKERS WERE DIVIDED

LEGISLATION WAS SPONSORED BY ASSEMBLYWOMAN GONZALEZ, D-SAN DIEGO **AND SIGNED BY THE GOVERNOR CERTIFIES A STATE LAW WITH A MUCH STRICTER “ABC” TEST....**

RATIONAL BEHIND THE NEW RULES:

“WHEN WORKERS ARE PUSHED INTO THE **UNCERTAIN EMPLOYMENT OF IC, IT FALLS TO THE STATE TO TAKE CARE OF THEM WHEN UNEMPLOYED, SICK OR RETIRE”**

IMPACT

- The penalties for getting it wrong most definitely qualify as more than a slap on the wrist:
 - unpaid state income tax, unemployment insurance and disability insurance.
- The IRS can charge back FICA and payroll taxes
- The court case made penalties retroactive....I have not heard what the bill the Gov signed says about this aspect.

PASSED BY GOV NEWSOM EFFECTIVE 1/1/2020

- Gov Newsom “A next step is creating pathways for more workers to form a union, collectively bargain to earn more and have a stronger voice at work – all while preserving flexibility and innovation”
- He will “convene leaders from the Legislature, the labor movement and the business community to support innovation and a more inclusive economy by stepping in where the federal gov has fallen short and granting workers excluded from the National Labor Relations Act the right to organize and collectively bargain.”

Certain positions/industries were made exempt for compliance with the ABC test **but still must use the former *Borello* multi-factor test instead.**

Insurance Agents

Registered/licensed security broker-dealers or investment advisers

Physicians, surgeons, dentists, podiatrists or psychologists

Licensed lawyers, architects, private investigators, accountants and engineers

Veterinarians (and Dog Groomers...according to Sacramento Bee)

Direct sales salespersons

Licensed realtors

**Hair stylists/barbers, estheticians, cosmetologists, electrologist and manicurists
(subject to narrow circumstances)**

Commercial fisherman working on an American vessel until 2021

Marketing, but the marketing work must be original and creative in character

Registered, or exempt from registration, travel agents

Graphic designers

Grant writers

Fine Artists

Enrolled agents licensed by the U.S. Treasury to practice before the IRS

Payment processing agents

Repossession agencies

**Administration of human resources but work must be intellectual, varied in
character and non-standard**

Photographers and photojournalists (35 submissions or less.....

Freelance writers editors or newspaper cartoonist (35 submission or less)

Motor club service providers

AB 5 ALSO HAS SEVERAL BROADER EXEMPTIONS

- **BUSINESS TO BUSINESS CONTRACTS:** *For two business that contract for services that are provided directly to the contracting business **and not the customer.***
- **CONSTRUCTION CONTRACTOR/SUBCONTRACTOR:** *For this business relationship if certain conditions are met, including the subcontract assumes financial responsibility for all errors or omission in labor or services, evidenced by insurance, indemnity clauses, performance bonds or warranties.*
- **CONSTRUCTION TRUCKING SERVICES:** *Trucking services only in the construction industry if the trucking contractor registers with the DIR as a public works contractor, even if the work is not public work; utilizes its own employees to perform the work; the trucking company does not utilize a broker; and exemption sunsets on 1/1/2022*

SO.....

- I am a concession partner that currently hires IC (1099 people) to provide the service I have contracted to provide such as fitness instructors.....
- I am a nonprofit cooperating association that uses retired parks staff to provide services and they receive a percentage of the fees collected....
- I am a small business park partner using services for...grant writing, seasonal staff, temporary staff for inventory, bookkeepers, social media managers, website maintenance and/or serving staff for special events.....