

New Laws for 2016

Presented By:

Kelly O. Scott, Esq. | Direct: 310.281.6348 | kscott@ecjlaw.com

PASSED LAW

DOL July 15, 2015 Administrator's Interpretation

- Misclassification is increasing
- Unfair to workers, careful employers and America!
- Common law control test is not broad enough
- **“Most workers are employees under the FLSA”**
- To employee is to suffer or permit to work is standard



PASSED LAW

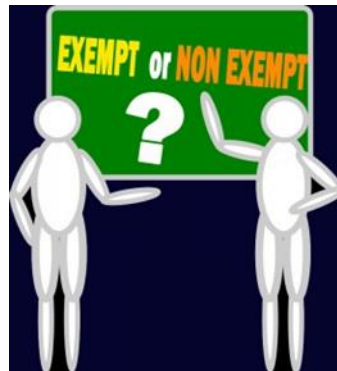
DOL July 15, 2015 Administrator's Interpretation (cont'd)

- 6-Factor Economic Realities Test should be applied
 1. Is the work performed an integral part of the employer's business?
 2. Does the worker's managerial skill affect the worker's opportunity for profit or loss?
 3. What is the worker's relative investment compared to the employer's investment?
 4. Does the work performed require special skills and initiative?
 5. Is the relationship between the worker and the employer permanent or indefinite?
 6. What is the nature and degree of the employer's control?
- Analysis is qualitative, not quantitative
- **Economic independence is key**

PROPOSED LAW

DOL Proposed Revisions to Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

- Salary from \$455 to \$921 per week, \$23,660 to \$47,892 per year
- Annual increase based on CPI or 40th percentile
- Could reach \$970 per week (\$50,440 annually) in 2016
- Highly compensated employees from \$100,000 to \$122,148



PROPOSED LAW

DOL Proposed Revisions to Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (cont'd)

- Duties not yet addressed, but comments sought:
 - What changes to duties test?
 - Should there be a minimum time spent on primary duties and, if so, how much?
 - Is concurrent duties regulation appropriate?
- Comments open until September 4, 2015



PROPOSED LAW

SB 1150: The Raise the Wage Act

- Attempt to meet power of purchasing dollar in 1967
- From \$7.25 to \$8.00 in 2016
- \$1.00 annual increases through 2020 to \$12.00 per hour
- Future increases tied to median hourly wage
- Gradually eliminate the \$2.13 subminimum wage for tipped workers



PROPOSED LAW

EEOC Proposes Rules on Wellness Programs

- Allows employers to offer up to 30% of cost of employee-only coverage for those who participate or achieve success
- If information sought, must be reasonably likely to promote health
- Cannot require participation in program
- Individuals with disabilities must be accommodated
- Disclosure of details of program and confidentiality methods will be required



IMPORTANT CALIFORNIA LEGISLATURE DEADLINES

- February 27, 2015
- June 5, 2015
- September 11, 2015
- October 11, 2015



PROPOSED LAW

SB 3 Adjustment of CA Minimum Wage

- January 1, 2016 from \$10 to \$11 per hour
- July 2, 2017 to \$13 per hour
- January 1, 2019 annual automatic adjustments tied to CPI
- Prohibits reductions by IWC



PROPOSED LAW

AB 465 Bans Mandatory Arbitration Agreements

- Prohibits requiring any waiver of legal right, penalty, remedy, forum or procedure
- Prohibits retaliation for refusal to waive
- Burden of proving a knowing and voluntary waiver on person seeking enforcement
- Civil penalty of \$10,000 per violation and reasonable attorney's fees



PROPOSED LAW

SB 406 Seeks to Expand CFRA

- Redefines “employer” to include 25 or more workers
- Redefines “child” to include biological, adopted, foster, stepchild, legal ward, offspring of domestic partner, child of loco parentis, and removes age and dependent status restriction
- Redefines “parent” to include parent in law
- Expands care leave for serious health condition to include grandparent, grandchild, sibling or domestic partner



PROPOSED LAW

AB 883 Seeks to Prohibit Negative Treatment of Public Employment by Private Employers

- Cannot publish announcement that applicant must not be a current or former public employee
- Prohibits Internet site operators from publishing announcement
- Cannot make adverse decision based on public employee status



PROPOSED LAW

AB 676 Seeks to Prohibit Negative Treatment of Status as Unemployed

- Cannot publish announcement that applicant must not be unemployed
- Prohibits Internet site operators from posting announcement
- Cannot ask until candidate has met minimum employment qualifications as published
- Civil penalty of \$1,000, \$5,000, \$10,000
- No private right for action



PROPOSED LAW

AB 622 Seeks to Restrict the Use of E-Verify

- Expands definition of unlawful employment practice from using E-Verify prior to job offer unless required by federal law
- Requires employer to provide affected employee with nonconfirmation notice from SSA or Homeland Security
- Civil penalty of \$10,000 for each violation



PASSED LAW

AB 202 Cheerleaders have rights too!

- Signed by Governor July 15, 2015
- Deems cheerleaders of professional sports teams in California as employees
- One event per year exception for non-affiliated persons



PASSED LAW

AB 304 Amends Healthy Workplaces, Healthy Families Act of 2014

- Signed by Governor July 13, 2015; **effective immediately**
- Clarifies 30 day in California requirement is for the **same** employer
- Allows pre-Jan. 1, 2015 sick leave or PTO policies to remain if:
 - 1 day or 8 hours within 3 months
 - 3 days or 24 hours within 9 months
- Any change must be an increase or:
 - Comply with statutory accrual rates or
 - Provide full amount at beginning of each year



PASSED LAW

AB 304 Amends Healthy Workplaces, Healthy Families Act of 2014 (Cont'd)

- Employer may use different accrual rate provided employee has 24 hours or 3 days to use by the 120th day of employment each year
- Carry over requirements still apply unless leave is provided up front
- Calculations have been simplified:
 - Pay in same manner as regular rate of pay for employee in week used or
 - By dividing total wages (excluding overtime) by hours worked in full pay periods for last 90 days
- Unlimited time can be stated as such on wage statement
- Notice requirements delayed for motion picture and broadcast industries until January 21, 2016

PAID
SICK DAYS

PASSED LAW

FEHC Amends CFRA Regulations Effective July 1, 2015

- Intended to conform CFRA to FMLA
- Expands “serious health condition” to include inpatient care or continuing treatment
- “Joint employers” added to “covered employers”
- “Covered employer” now includes successor companies
- “Spouse” includes same-sex marriages
- Employer has 5 business days to respond



PASSED LAW

FEHC Amends CFRA Regulations Effective July 1, 2015 (Cont'd)



- New poster and certification forms
 - Joint Notice for Family Care and Medical Leave (CFRA Leave) and Pregnancy Disability Leave: (Temporary)
<http://www.dfeh.ca.gov/res/docs/Publications/Brochures/2015/DFEH-100-210-rev072015.pdf>
 - CFRA Certification of Health Care Provider Form:
<http://www.dfeh.ca.gov/res/docs/Publications/CFRACertificationForm.pdf>

DOL Issues New FMLA Forms

- <http://www.dol.gov/whd/fmla/2013rule/militaryForms.htm>