

2001: AN EMPLOYMENT ODYSSEY

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Several important labor law changes became effective on January 1, 2001. Here is a brief overview:

1. Minimum Wage Increase. Effective January 1, minimum wage was increased from \$5.75 per hour to \$6.25 per hour in the State of California. Additional changes were made regarding meal and lodging credits and various exceptions to minimum wage requirements. The changes are described in a new California Minimum Wage poster. Employers should note that the change automatically increases the minimum salary required for exempt employees from \$1,993.33 per month to \$2,166.00 per month.

2. New Wage Orders. At the end of the year, the Industrial Welfare Commission (IWC) issued revised Wage Orders, effective January 1, 2001. These 16 industry-specific Wage Orders must be posted by each business, as applicable, immediately, along with the previously issued Summary of Amendments to Wage Orders. Employers in the construction, drilling, logging and mining industries should understand that they are covered by the newly created Wage Order 16.

3. Personnel Records. Senate Bill 1327 became effective on January 1, requiring that employers permit employees to inspect their personnel records upon request. Employers can establish procedures for employees to review their files, such as requiring the employee to schedule an appointment and to have an employer representative be present during the review. The new law extended the application of prior law to public employees and standardized the manner in which personnel records can be inspected.

4. Independent Contractor Reporting. All businesses and governmental entities who hire independent contractors must now file a form with the Employment Development Department (EDD) providing specific information upon entering into a contract with an independent contractor. The information must be provided within 20 days of entering into a contract for over \$600 or more in any calendar year, or within 20 days of making payments totaling \$600 in any calendar year, whichever is earlier. Employers are

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PRACTICE AREAS

Employment

required to use form DE-542 supplied by the EDD. The law is intended to track parents who have failed to pay child support and the EDD is required to keep the information confidential. Employers are forewarned, however, that the information could well trigger audits by the EDD of the classification of workers as independent contractors. We therefore recommend that employers make sure that their classification of independent contractors is correct prior to filing the required reports.

5. New Mileage Reimbursement Rates. The Internal Revenue Service (IRS) has increased the mileage reimbursement rate for business use of a car from 32.5 cents to 34.5 cents per mile. The new rate applies to all miles driven after January 1, 2001.

6. Harassment Law Expanded. As of January 1, all employees can be held personally liable for their harassment of co-workers or independent contractors. The law applies to a variety of harassment claims, including those based on race, religion, national origin, disability, medical condition, pregnancy, marital status, age or sexual orientation. Employers should use the enactment of the law as an opportunity to conduct harassment training and further encourage employees to abide by the employers' policies against harassment and discrimination.

7. New Immigration Rules. Regulations issued by the U.S. Department of Labor have increased the number of H-1B visas available for specialized foreign professionals. The quota was increased from 115,000 to 195,000 for the next three years. The new regulations prohibit employers from replacing U.S. workers with H-1B workers and require that H-1B workers be provided the same benefits as are offered to U.S. workers. The price of each visa has been increased from \$500 to \$1,000.

8. New Wage Statements Required. Assembly Bill 2509 now requires that with each paycheck a wage statement be issued to each employee which provides the hourly rate of pay and the number of hours worked by the employee at each applicable rate. In addition, the statement must include information regarding any applicable piece rates and the number of piece rate units worked. An employer who violates the new law must pay a fine to each employee of the greater of the actual damages or \$50 for the initial pay period and \$100 for each subsequent pay period in which the violation occurs, up to a maximum penalty of \$4,000. The bill also requires that employees who earn tips by credit card be paid the full amount of the gratuity on the next regular payday following the date on which the customer authorized the credit card payment and prohibits any deductions for bank processing fees.

9. Attorneys' Fees, Interest and Penalties. Assembly Bill 2509 also revised the payment of attorneys' fees in a lawsuit for a claim of nonpayment of wages or benefits. Under the rule, the prevailing employee is entitled to his or her attorneys' fees; the employer, however, is not entitled to attorneys' fees, even if the employer wins the dispute. In addition, penalties and compensation awards determined by the Labor Commissioner will now accrue interest at the then-current legal rate, which is presently 10%. Further, any employer who appeals any wage award issued by the Labor Commissioner will be required to post a bond. Finally, AB 2509 requires that employees be paid an additional hour at their regular rate of pay for each day in which they are not provided a meal or rest period.

10. Posting Requirements. Employers should know that a number of new posters are required for the workplace. These include the appropriate 200 IWC Wage Order, the California Minimum Wage Poster, California's "Harassment or Discrimination In Employment is Prohibited by Law" poster and California's "Unemployment/Disability Insurance" poster.

The laws described above are more detailed than the brief overview provided herein. Accordingly, employers should check with their legal counsel regarding the specific application of these rules.