

SMAC

SMAC Legislative Report

Of CALIFORNIA

News from the Small Manufacturers Association of California

A compilation of news and commentary on the recent actions of California Legislators and bureaucrats in Sacramento

MANY NEW LAWS INCLUDING INCREASED MINIMUM WAGE, REVISED PAID FAMILY LEAVE CHANGES EFFECTIVE JULY 1

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Microsoft Spokesperson.

By Tom Martin
SMAC Executive Director
& Legislative Chairman

KNOW THE LAW

In addition to the minimum wage increase going into effect July 1, 2014 there are some other new laws going into effect on the same date. Those laws include:

PAID FAMILY LEAVE

Effective July 1, Paid Family Leave benefits for employees are expanded to include benefits for time taken off to care for a seriously ill grandparent, grandchild, sibling or parent-in-law.

Employment Development Department has revised the Paid Family Leave pamphlet to add the new "family member" definitions. These pamphlets must be given to new hires and to employees who take a leave of absence for a covered reason.

WORK COMP PREDESIGNATION OF PHYSICIAN

Effective July 1 new workers' compensation regulations concerning predesignation of personal physicians become active.

California Chamber reports "According to the Department of Industrial Relations, the final regulations change the criteria that an employee must meet to predesignate a personal physician or medical group for work-related injuries or illnesses to conform to SB 863.

"For example, in the past, predesignation was permitted only if the employer provided regular health care insurance to its employees. Labor Code Section 4600(d) was amended to allow the employee to predesignate as long as the employee has any health care coverage for nonoccupational injuries or illnesses in a plan, policy or fund (such as a spouse's policy), as described in Labor Code Section 4616.7. These regulations implement these provisions."

The regulations revise the forms used for predesignating a personal physician or a personal chiropractor. In addition, the regulations interpret and clarify what is meant by "chiropractic visits" under Labor Code Section 4604.5 and implements the limitation on the number of chiropractic visits an injured worker may have unless a specific exception applies.

WORK SHARING PLANS

Effective July 1, 2014 EDD changes the requirements for work sharing plans. EDD uses a special work sharing program to help companies avoid mass layoffs by sharing the available work among employees. For more information about the work sharing program, visit EDD's [work_sharing_webpage](#).

THE NEW MINIMUM WAGE

Effective July 1, 2014, California's minimum wage increased to \$9 per hour from the existing minimum wage of \$8 per hour. This is the first increase to the state minimum wage since January 1, 2008.

Employers should examine all pay practices that might be affected by the minimum wage increase:

- Minimum Wage
- Draws Against Commissions
- Exempt/Nonexempt
- IWC Wage Orders
- Meals and Lodging
- Notice Requirements
- Overtime Rate
- Piece-Rate Employees
- Subminimum Wage
- Tools/Equipment

THE MINIMUM WAGE

Effective July 1, 2014, California employers must pay employees no less than the state minimum wage \$9.00 per hour for all hours worked. While the federal minimum wage is \$7.25 per hour, if local or state or federal laws differ, employers must comply with the higher, more restrictive requirement. Local wage ordinances, such as San Francisco (\$10.74 minimum) and San Jose (\$10.15) are enforceable in their communities. The obligation to pay can't be waived by any agreement, including collective bargaining agreements.

Effective January 2016 the hourly minimum wage will increase to \$10.00 per hour if the law does not change (See below.)

DRAWS AGAINST COMMISSIONS

A commissioned employee can receive a sum of money that is intended as an advance, draw or guarantee against the employee's expected commission earnings.

In California, employers must pay these at least twice per month. If an employee receives a draw against commissions to be earned at a future date, the "draw" must be equal to at least the minimum wage and overtime due to the employee for each pay period (unless the employee is exempt).

EXEMPT/NONEXEMPT

Employers must understand the impact of the minimum wage increase on exempt/nonexempt classifications and ensure that employees meet the salary basis test for the particular exemption claimed.

The California Chamber of Commerce states that for an employee to meet a "white collar" exemption from overtime (the commonly used administrative, executive or professional exemptions), he/she generally must earn a minimum monthly salary of no less than two times the state minimum wage for full-time employment, in addition to meeting all other legal requirements for the exemption.

(The exempt/nonexempt classification is based on the state minimum wage, not local ordinance rates (see below) and most employers will be required to pay that rate.)

Effective July 1, 2014, the minimum salary requirements for these exemptions will increase to \$3,120 per month (or \$37,440 annually), from \$2,773.33 per month (or \$33,280 annually).

Also, certain commissioned inside sales employees under Wage Orders 4 and 7 can be eligible for an overtime exemption. This exemption applies if the employee earns more than 1.5 times the minimum wage each workweek, and more than half of the employee's compensation represents commission earnings.

Employers will need to confirm that commissioned inside sales employees continue to meet this test after the July 1 minimum wage increase. Outside salespeople do not need to meet the minimum salary requirements.

IWC WAGE ORDERS

The California Department of Industrial Relations will revise the published 17 Wage Orders reflecting the new minimum wage rate, as well as revised meal and lodging credit information. Employers must post the relevant IWC Wage Order(s) for all employees to see

MEALS AND LODGING

Most of California's Wage Orders allow employers to credit meals and lodging furnished by the employer toward the employer's minimum wage obligation (Section 10 of the Wage Orders). The new credit amounts for meals and lodging are listed on the official Minimum Wage Order (MW-2014).

NOTICE REQUIREMENTS

The minimum wage increase affects employer notice requirements related to the minimum wage posting, itemized wage statements and wage notices.

Employers must post California's official Minimum Wage Order (MW- 2014) in a conspicuous location frequented by employees. The official notice has been updated by the Department of Industrial Relations and includes both the July increase and the second increase scheduled for January 1, 2016.

California employers also must provide employees with an itemized statement, in writing, at the time wages are paid (Labor Code Section 226). Among other mandatory information, the itemized wage statement must include all applicable hourly rates in effect during the pay period and the corresponding number of hours the employee worked at each hourly rate.

California employers also must provide nonexempt employees with a wage notice pursuant to Labor Code Section 2810.5. The written notice must be provided at time of hire and again within seven calendar days after a change is made to any information in the notice. Among other things, employers are required to notify nonexempt employees, in writing, when there is any change to:

- The employee's rate of pay;
- Any overtime rates of pay; and
- Any allowances, such as meal or lodging allowances, claimed as part of the minimum wage (Labor Code Section 2810.5).

According to the California Chamber of Commerce, if an employee's rate of pay increased July 1 due to the minimum wage increase, the employee must receive a notice by July 7, 2014. This separate wage notice is not required if the employer has reflected the change on a timely itemized wage statement, if the statement meets all legal requirements.

OVERTIME RATE

The state minimum wage rate change affects overtime. Effective July 1, 2014, employees who work for minimum wage and perform work that qualifies for overtime must be paid at least \$13.50 per hour for time and one-half or \$18 per hour for double-time.

PIECE-RATE EMPLOYEES

The minimum wage increase also affects piece-rate employees. Piece-rate workers must receive at least minimum wage for each hour worked. California Chamber reports that recent court decisions have focused on ensuring that minimum wage is paid for work time spent doing work not covered by the piece rate and rest periods.

SUBMINIMUM WAGE

There is no distinction between adults and minors when it comes to paying the minimum wage.

A limited exception exists for "learners," but that exception is not dependent on age. "Learners" are employees who have no previous similar or related experience in the occupation. California's Wage Orders permit you to pay learners 85 percent of the minimum wage, rounded to the nearest nickel. State law allows the subminimum wage to be paid for only the first 160 hours of work, after which the employee must be paid at least minimum wage.

The state subminimum wage rate July 1 will increase to \$7.65 per hour (from \$6.80 per hour). It will rise to \$8.50 January 1, 2016. Federal and state laws provide different definitions of learners. California employers must be careful to comply with both federal and state subminimum wage requirements and give employees the benefit of whichever law is more favorable to them.

TOOLS/EQUIPMENT

When an employer requires that employees use certain tools or equipment or when the tools or equipment are necessary to perform the job, the employer must provide and maintain the tools or equipment.

Employees whose wages are at least two times the minimum wage can be required to provide and maintain hand tools and equipment customarily required by the trade or craft in which they work.

SENATOR MARK LENO SEEKS TO INCREASE MINIMUM WAGE EVEN MORE

Even before the dust settles on the new California minimum wage the legislature, led by State Senator Mark Leno are working to increase the minimum wage again.

The Senate has passed legislation that would again raise the state's minimum wage. Senate Bill 935,

authored by Senator Leno, raises the minimum wage in three steps, starting at \$11 an hour in 2015 (bypassing the \$10.00 rate scheduled for January 1, 2016). It would then increase to \$12.00 per hour in 2016 and to \$13.00 in 2017.

Beginning in 2018, the minimum wage would be adjusted annually to the rate of inflation. SB 935 is co-sponsored by the Women's Foundation of California and SEIU California State Council.

WEARABLE TECHNOLOGY RAISING MANY CONCERNS ABOUT BUSINESS SECURITY

According to Security Magazine Editor Diane Ritchey, many tech giants have recently made a big push in wearable items – from watches with integrated cellphones, to smart glasses that can record what we see in day-to-day life. Yet, many of these seemingly harmless items are raising security concerns.

Paul Martini, co-founder and CEO of iboss, told Ritchey that it is through a device's ability to interact with the outside world that those security concerns come into place. "For example, if Google Glass did not have the ability to record video, there would be no worry that sensitive data within an organization could be recorded and lost," he said.

"If a smart watch did not have a microphone, there would be no worry that confidential information could be audio-recorded and transferred outside of the network."

In addition to a device's ability to obtain data we need to look at storing or transferring data, Martini says.

"The galaxy is the difference between an original calculator watch and Samsung's Galaxy Gear smart watch. The Galaxy Gear watch sends and receives text messages, makes phone calls and stores voice recordings. These watches have the ability to both store and transfer data.

This is a critical piece that makes today's wearable technology a security concern for business.

Although the stored data may be harmless, it does not discriminate about the type of data being stored or transferred. The stored data could be sensitive, violating laws such as HIPPA, or the company's intellectual property.

The ability to store or transfer data is where the problem resides," Martini says,

The solution is a combination of creating organizational rules, and updating network security infrastructure so that it can control and in some cases control the movement of data to and from these devices. Creating organizational rules regarding acceptable technology, wearable or not, is step one.

It's important to understand how a device works with regard to its' ability to store and transfer data. For example the Galaxy Gear watch connectivity is typically via Bluetooth and it must connect to a cellphone to

transfer information. Without a cellphone the watch has no ability to transfer data over the network. It can store audio recordings and store pictures within its onboard memory without a phone present. In this case an organization needs to decide whether or not smart phones are allowed in the workplace and/or allowed on the network.

If smart phones are not allowed within the workplace, due to the risk a camera, audio and storage bring, the smart watch should not be allowed either.

“If the organization uses mobile Device Management (MDM) to manage what is enabled or disabled on the mobile phone, then a phone might be acceptable,” Martini says. “For example, using a MDM solution, the camera on the phone could be locked so that no pictures could be taken at the office.”

An organization should consider upgrading its network security infrastructure. This will help to detect, and in some cases prevent data loss through the use of wearable technology. Advanced security solutions analyze data flow and can identify the type of device sending and receiving data.

In the case of wearable technology, the solution could detect data communication out of the network that originated from the device and then alert an administrator of the transfer. Even if the security solution is not able to block the communications generated from the wearable device, detecting it may be enough to alert an administrator that an unacceptable device is being used on the network.

Martini told Ritchey wearable technology should only be considered acceptable in the organization if it brings value to the company or makes an employee’s life easier so he/she can perform better. When considering wearable technology, remember to take a step back and determine what capabilities the technology has. If the risks outweigh the rewards, consider preventing their use within the organization.

COMPANIES STILL USING XP MAY FACE CHALLENGES WITHOUT MICROSOFT AID

Microsoft has been warning about the demise of Windows XP support since September, 2007, and in 2013 Microsoft announced that after 12 years, support for Windows XP would end April 8, 2014. For the average consumer it did. Support for Office 2003 also ended on April 8, 2014.

Microsoft said “There will be no more security updates or technical support for the individual Windows XP operating system and recommended it is very important that customers and partners migrate to a modern operating system such as Windows 8.1.”

But, in shutting down XP they also threatened the safety and use of bank ATMs. As of April, 2014 it was

reported that 95% of bank ATMs (200,000) in the US continue to run on Windows XP.

As of February, 2014 XP’s market share was 29.23% and in 2014 it actually increased .55%. It is estimated that it will cost \$200 billion to \$700 billion, labor included to update the ATMs and other large companies still using XP.

But for those large XP users who, because of special needs, cannot simply walk away from XP Microsoft’s has created Custom Support for Windows XP.

Custom Support for Windows XP is described as a last-ditch effort for big businesses and some governments to quite literally buy some more time to migrate from Windows XP to a more modern operating system.

The U.K. paid 5.548 million pounds to Microsoft for an additional year of support to maintain critical and important security updates for Windows XP, Office 2003, and Exchange 2003.

Custom Support will be costly for businesses that were too slow to act: It could cost up to \$5 million per year (according to one published report), negotiated on a custom, per-company basis. Last year, one report claims that the prices could go as high as \$200 per PC, per year.

To date, Microsoft has given no indication that it will extend consumer support for Windows XP after the April 8 deadline, even though it has extended anti-malware support through July, 2015. After that date, any and all vulnerabilities found for Windows XP will live on forever, even though there are some avenues to keep your PC safe and protected after the deadline expires.

CALIFORNIA BUDGET UPS PENALTIES

The Governor’s budget included changes to EDD penalties for not filing and paying in a timely manner. Effective with the 3rd quarter 2014, penalties for late filing and late deposits will increase from 10% to 15%. In addition, penalties charged for not reporting employee wage information will increase from \$10 to \$20 per employee. Penalties for periods prior to 3rd quarter 2014 will continue to be charged at the lower rate.

Thanks and a tip of the hat to:

California Chamber of Commerce
California State Senator Mark Leno
Security Magazine Editor Diane Ritchey

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SMAC Newsletter in the subject line