

THE GOLDSTEIN LAW FIRM, A.P.C.

Established 1977

ATTORNEYS AT LAW

LABOR & EMPLOYMENT LAW NEWSLETTER

8912 BURTON WAY • BEVERLY HILLS, CALIFORNIA 90211

(310) 553-4746 • cgoldsteinesq@gmail.com

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I. THE GOLDSTEIN LAW FIRM'S 39TH ANNUAL LABOR, EMPLOYMENT AND WAGE AND HOUR LAW SEMINAR WILL BE HELD ON WEDNESDAY, OCTOBER 26, 2016 FROM 8:30 AM TO 12:00 P.M. AT THE CERRITOS CENTER FOR THE PERFORMING ARTS. SIGN UP NOW!!!

Each year since 1977 we have conducted a Labor and Employment Law Seminar. In the past 5 years, we have devoted significant attention to wage and hour issues that have triggered costly wage and hour class actions and PAGA claims. Our seminars discuss practical and effective strategies that employers and their management can use to respond to new legal trends and challenges. Business owners, key executives, and managers who deal with labor, employment and/or wage and hour issues should attend.

2016 SEMINAR TOPICS INCLUDE:

1. Demystifying the New Federal Rules for Salaried Exempt Employees and Complying with California’s Stricter Job Duties Standards for Exemption; Local Living (Minimum) Wage Laws and How to Take Preventive Action to Avoid Costly Wage and Hour Class Actions and PAGA Claims.
2. Adapting Your Hiring, Discipline and Firing Practices to the New Available Technologies, Social Media and a Changing Millennial Workforce.
3. Family Businesses: What Do You Do When the Target of a Workplace Complaint, Lawsuit or Administrative Action is a Member of Your Own Family?
4. A Practical Review of the New Labor, Employment and Wage and Hour Trends, Such as Criminalizing Wage and Hour Violations; New Cases, and Legislation that will directly affect your business in 2016-2017.

II. U.S. Department of Labor New Salary Regulations Will Impact California Employers:

Effective December 1, 2016, in order for salaried employees to be exempt under the Fair Labor Standards Act (“FLSA”) from overtime, employees will have to earn \$913.00 per week; \$47,476.00 for a full year. The total annual compensation requirement for highly compensated employees subject to a minimal duties test under the FLSA is \$134,004.00. The FLSA regulations also establish a mechanism for automatically updating the salary and compensation levels every three years. The regulations continue the same job duties test under the FLSA. At present California employers are required to pay a monthly salary equivalent to no less two (2) times the California Minimum Wage or \$20 per hour or \$3,460.00 a month or \$41,520.00 a year. The minimum wage for employers in Los Angeles will increase to \$10.50 July 1, 2016. **California employers will be required to pay the salary required by the FLSA or California law, whichever is higher.**

A. 4 Considerations For How To Deal With the Increased Salary Requirements Under Federal and California Law:

1. Does continuing salaried exempt status benefit your organization or only benefit the

employee who is presently salaried exempt?

2. Does the salaried exempt employee actually work many hours in excess of eight (8) in a day and/or forty (40) hours in a workweek.
3. How would you deal with record keeping of hours and meal breaks for employees converted from salaried to hourly employees?
4. Does the employee presently perform work away from the office and/or at home?
5. How will you deal with these issues if the employee becomes an hourly non-exempt employee?

B. Alternatives Strategies To Mitigate The Effects of the New Salary Test:

1. Maintain the salary level that **economically makes sense** for your organization, instead of paying the increases required by FLSA and California law, **but strictly enforce a policy against working overtime and working away from the office.**
2. Employers are required to pay employees for work performed where the employer “suffers or permits” the employee to perform the work. There is a low standard of proof for an employ to claim that the employer suffered or permitted the employee to work.
3. Require employees to accurately document their work time; their unpaid thirty (30) minute meal breaks; when during the first half of their shift they take their ten (10) minute rest period; and when during the second half of the their shift they take their second ten (10) minute rest period.
4. Make certain that employees who do not meet the salary test under federal law starting on December 1, 2016 and the California Wage Orders accurately report any overtime worked in a timely manner.
5. Have strict policies against these employees performing work away from the work site.
6. Revise the job descriptions and job duties of employees who are salaried or recently converted from salary to hourly, because their salary will not meet the salary requirements under the FLSA as of December 1, 2016 or they have been converted to hourly employees. The purpose of revising the job descriptions of these employees is to show that their job duties have been changed to reduce or eliminate the requirement that in order to perform all of their job duties as listed in their job descriptions they would have to work a significant amount of overtime.
7. **Contact The Goldstein Law Firm for advice and counsel on how to make the difficult transition of some employees from salaried exempt employees to hourly employees or to deal with employees who prefer to be salaried even if they are not paid the salary required to be exempt under the FLSA and California law.**

III. The New Los Angeles City Minimum Wage Law Raises the Minimum Wages that Employers Must Pay in the City and Also Increases Paid Sick Leave to Six Days a Year, Three (3) More Than under The California Paid Leave Act:

The new Los Angeles City Minimum Wage Law defines the terms employees, employer and non-profit corporation as follows:

Employees who are to be paid the City minimum wage as any individual who 1. In a particular week performs at least two hours of work within the geographical boundaries of the City for an Employer and 2. Qualifies as an Employee entitled to payment of the minimum wage from any Employer under the California minimum wage law...”

Employer who must pay the minimum wage and adhere to the new law is defined as any person, as defined in section 18 of the California Labor Code, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercised control over the wages, hours or working conditions of an Employee.

Non-Profit Corporation is defined to mean a non-profit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and, if a foreign corporation, in good standing under the laws of the State of California, which corporation has established and maintains valid non-profit status under Section 501 © (3) of the US Internal Revenue Code of 1986, as amended and all of the rules and regulations promulgated there under.

Employers with 26 or more Employees shall pay a wage of no less than the hourly rates set forth below on the effective dates set forth below:

1. On July 1, 2016, the hourly wage shall be \$10.50
2. On July 1, 2017, the hourly wage shall be \$12.00
3. On July 1, 2018 the hourly wage shall be \$13.25
4. On July 1, 2019, the hourly wage shall be \$14.25
5. On July 1, 2020, the hourly wage shall be \$15.00

Employers with 26 or fewer Employees shall pay a wage of no less than the hourly rates set forth below on the effective dates set forth below:

1. On July 1, 2017, the hourly wage shall be \$10.50
2. On July 1, 2018, the hourly wage shall be \$12.00
3. On July 1, 2019, the hourly wage shall be \$13.25
4. On July 1, 2020, the hourly wage shall be \$14.25

5. On July 1, 2021, the hourly wage shall be \$15.00

On July 1, 2022, annually thereafter, the minimum wage will be increased based on the CPI for Urban Wage Earners and Clerical Workers for the Los Angeles Metropolitan Area (Los Angeles-Riverside-Orange County, CA)

There are other relevant provisions of the city ordinance that relate to employees who are 14-17 being paid not less than 85% of the city minimum wage and non-profit corporations with 26 or more employees qualifying as a Transitional Employer applying for a limited exemption.

Unless you are prepared to move your business operation outside of the City of Los Angeles and potentially outside of Los Angeles County should the County adopt a similar law, you will have to comply with the provisions of the City of Los Angeles Minimum Wage Ordinance. If you are a non-profit organization with 26 or more employees, you may wish to consult with The Goldstein Law Firm on how to seek a deferral rate schedule as specified in Section 187.02.C.

Los Angeles City Minimum Wage Law Section 187.04 Sick Time Benefits:

- A. Every employee who, on or after July 1, 2016, works in the City for the same Employer for 30 days or more within a year from the commencement of employment is entitled to paid sick leave.
- B. Paid sick leave shall accrue on the first day of employment or July 1, 2016, whichever is later.
- C. An Employee may use paid sick leave beginning on the 90th day of employment or July 1, 2016, whichever is later.
- D. Employers must provide sick leave either: 1) by providing the entire 48 hours to an Employee at the beginning of each year of employment, calendar year, or 12 month period; or 2) by providing the Employee one hour of sick leave for every 30 hours worked.
- E. Employees will be entitled to take up to 48 hours of sick leave in each year of employment, calendar year, or 12 month period. Accrued unused paid sick leave shall carry over the following year or employment year and may be capped at 72 hours. An Employer may set a higher cap or no cap at all.
- F. If an Employer has a paid leave or paid time off policy or provides payment for compensated time off, that is equal to or no less than 48 hours, no additional time is required.
- G. An Employer shall provide paid sick leave upon oral or written request of an Employee for themselves or a family member, as defined by Labor Code Section 246.5(a) and 245.5(c). An Employer may require an Employee to provide reasonable documentation of an absence from work for which paid sick leave is or will be used.

H. An Employer is not required to pay the Employee compensation for accrued but unused paid sick leave when the employee voluntarily or involuntarily terminates their employment. However, if the employee returns to your employment within one year they are entitled to have the accrued, but unused paid sick leave reinstated.

Five (5) Tips For Dealing With New Los Angeles City Paid Sick Leave Requirements:

1. If you are an employer located within the City of Los Angeles you should update your Employee Handbook to comply with the sick leave provisions of the new City of Los Angeles Minimum Wage Law. If you are audited the first document that will be requested will be your Employee Handbook.
2. Make certain that your employees are put on notice of the new law since the Los Angeles Minimum Wage Law requires employers to given notice of the employee's rights under the law.
3. Although the Los Angeles City law increases the hours of paid sick leave from 24 hours, 3 days, to 48 hours, 6 days, if you are **already** providing "paid leave or paid time off of 48 hours" no additional time is required. **Take advantage of this language and have clear language in your Employee Handbook as to your paid time off policies that would excuse your business from providing additional sick leave above 3 days, 24 hours already required by state law.**
4. If you believe that an employee is abusing the paid sick leave provided under the City of Los Angeles law, require the employee to provide reasonable documentation of the need for the absence from work for which paid sick leave is or will be used.
5. **Contact The Goldstein Law Firm to have your Employee Handbook updated to comply with the sick leave provisions of the City of Los Angeles Minimum Wage Ordinance or any other questions relating to your compliance with the new law.**

IV. CALENDAR OF UPCOMING EVENTS:

For many years members of The Goldstein Law Firm are available as a public service to speak to business and professional groups. The following is a list of scheduled speeches. If you are a member of a business or professional group, The Goldstein Law Firm would be pleased to provide you with speaker on a vast array of current labor, employment, and wage hour topics that would be of broad interest to the members of your organization. Our current speaking schedule is:

July 13, 2016 – Speech before the American Payroll Association – Fontana.
"Wage & Hour Class Actions – 12 Danger Zones" and Employment Law Issues

July 20, 2016 – Speech before the West Inland Employer Advisory Council.
"Wage & Hour Class Actions – 12 Danger Zones" and Employment Law Issues

July 21, 2016 – Speech before the American Payroll Association – Los Angeles:
*“Wage & Hour Class Actions – 12 Danger Zones; Payroll Security Best Practices; and
U.S. Department of Labor Overtime Rule interpreting the Fair Labor Standards Act;*

October 26, 2016 – Speech before the Association of Certified Fraud Examiners – Los
Angeles: *“Employee Fraud, Theft & Recovery.”*

November 16, 2016 – Speech before the California Employer Advisory Council – San
Gabriel Valley: *“Recent Trends/Challenges in HR & Employment Law Updates”*

December 8, 2016 – Speech before the American Payroll Association – Sacramento:
“Wage & Hour Class Actions – 12 Danger Zones”

**THE GOLDSTEIN LAW FIRM – EXPERIENCE AND SUCCESSFUL
REPRESENTATION OF EMPLOYERS SINCE 1977 COUNTS.**

**Employment Law, Wage and Hour Law, Labor Law,
Business Litigation, Contract Disputes, Arbitrations, Corporate and
Transactional Law, Shareholder Disputes, Commercial Law, Appellate Law,
Corporate Investigations, Wrongful Death, Training & Workshops**

**The Goldstein Law Firm
8912 Burton Way
Beverly Hills, California 90211
Telephone: (310) 553-4746
Facsimile: (310) 282-8070**

**cgoldsteinesq@gmail.com
josephgoldsteinesq@gmail.com
jonathangoldsteinesq@gmail.com**