

**THE GOLDSTEIN LAW FIRM, A.P.C.**

*Established 1977*

**ATTORNEYS AT LAW**

**LABOR & EMPLOYMENT LAW NEWSLETTER**

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**OCTOBER-NOVEMBER 2016**



**I. “AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE.” HAVE YOU SENT IN YOUR REGISTRATION FORM FOR THE GOLDSTEIN LAW FIRM’S 39<sup>TH</sup> ANNUAL LABOR, EMPLOYMENT, AND WAGE AND HOUR OCTOBER 26, 2016 SEMINAR.**

**SIGN UP NOW! OUR 39<sup>TH</sup> ANNUAL 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.**

**WHO SHOULD ATTEND:**

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.

**WHY SHOULD I ATTEND THIS SEMINAR?**

**An ounce of prevention is worth a pound of cure. You have to be aware of the new trend labor, employment wage and hour laws, including new federal wage and hour regulations, new California laws that will affect every business in the state. Knowing the new laws, regulations and trends can help prevent your from becoming a victim of the California costly regulatory and litigious legal system.**

**THE SEMINAR REGISTRATION FORM IS ATTACHED TO THIS NEWSLETTER**

**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;**
- 5. New Cases and Legislation that will directly affect your business in 2016-2017.**

**II. IS YOUR COMPANY PREPARED TO IMPLEMENT THE NEW U.S. DEPARTMENT OF LABOR SALARY FOR EXEMPTIONS FROM OVERTIME OF EXECUTIVE, ADMINISTRATIVE AND PROFESSIONAL EMPLOYEES**

- A. **December 1, 2016 is less than 60 days away. That is the date that the new US Department of Labor Regulations interpreting the federal Fair Labor Standards Act becomes effective.** That means employers within the broad jurisdiction of the FLSA that effects most employers in the California must comply with the new regulations.
- B. The Basic Provisions of the new Salary Requirement sets the minimum salary that an employer must pay to an exempt employee who meets the job function test under federal law at the 40<sup>th</sup> percentile of earnings of full-time salaried workers wage Census Region, currently the South (\$913 per week; \$47,476 annually for a full year.
- C. The annual compensation requirements for highly compensated employees(HCE) minimal duties test to the annual equivalent of the 90<sup>th</sup> percentile of the full-time salaried employee (\$134,004);
- D. The regulations establish a mechanism for automatically updating the salary and compensation levels to maintain the levels above these percentiles and to ensure that they continue to provide us test for exemption.
- E. Additionally, the Final Rule amended the salary basis test to allow employers to use nondiscretionary incentive payments (including commissions) to satisfy up to 10 per cent of the new standard salary.
- F. Future automatic updates to those thresholds will occur beginning on January 1, 2020.

**RED ALERT- YOUR ARE NOT IN KANSAS DOROTHY, YOU ARE IN CALIFORNIA WHERE YOU HAVE TO COMPLY WITH THE STRICTER PROVISIONS OF THE FAIR LABOR STANDARDS ACT AND THE CALIFORNIA WAGES AND HOUR LAWS.**

In order for an executive (manager), administrative employee and professional employees to be exempt from overtime they must be paid a salary of double the minimum wage and spend over 50% of their time performing executive(managerial), high level administrative duties and or professional duties. Under the FLSA the focus is on the purpose of the job, the so-called qualitative test, rather than the California quantitative test, how much time the employees spends performing executive(managerial), high level administrative duties and professional duties.

## **WHAT DO THE NEW US DEPARTMENT OF LABOR REGULATIONS MEAN FOR PRIVATE SECTOR CALIFORNIA EMPLOYERS**

We will be discussing this issue extensively at The Goldstein Law Firm 39<sup>th</sup> Annual Seminar.

**If you are unable to The Goldstein Law Firm 39<sup>th</sup> Annual Seminar and have questions regarding the affect of the new federal salary regulations on California employers, contact The Goldstein Law.**

### **III. WILL EMPLOYERS HAVE THE RIGHT TO ENFORCE THEIR SUBSTANCE ABUSE POLICIES IF PROPOSITION 64. THE CONTROL, REGULATE AND TAX ADULT USE OF MARIJUANA ACT. IS PASSED BY THE VOTERS?**

While the members of The Goldstein Law Firm believe for many reasons legalizing the personal use of marijuana is a very bad idea that will produce far more serious and costly social and health problems then the revenues the government will generate, the new law if passed by the voters does appear to preserve the right of employers to have a drug free workplace.

The Control, Regulate and Tax Adult Use of Marijuana Act Section 11362.45 states “Nothing in Section 11363.1 shall be construed or interpreted to amend, repeal, affect, restrict or preempt (a) Laws making it unlawful to drive or operate as vehicle..... while smoking, ingesting or [being] impaired by, marijuana or marijuana products. The Act is passed further states that “Nothing in Section 11363.1 shall be construed or interpreted to amend, repeal, affect, restrict or preempt Subsection of (f) “The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees or prevent employers from complain with the state or federal law.”

#### **A. WHAT HAPPENDS WHEN A CALIFORNIA APPLICANT FOR EMPLOYMENT OR A CURRENT EMPLOYEE FAILS A DRUG TEST BECAUSE OF THE LAWFUL “RECREATIONAL MARIJUANA” USE OUTSIDE OF WORK?**

Since at least 1997 when the California Supreme Court in *Loder v. City of Glendale*

**ruled that employers could drug test job applicants without reasonable suspicion and current employees with reasonable suspicion that the employee was under the influence of unlawful substances, employers have relied on the precedent.**

**When employees challenge an employer's right to removal an employee who failed a drug test from the workforce in the face of the employee's claim that marijuana use was for medical purposes allowed by California law, the California Supreme Court reject this argument.**

**In Colorado where the use of "recreational marijuana" was recently legalized, the California Supreme Court was faced with a case involving an employee who claimed that he was wrongfully discharged for marijuana use that was a lawful activity outside of work. The Colorado Supreme Court rejected the argument contending that the term lawful has a broader meaning than lawful under state law.**

**It is the opinion of The Goldstein Law Firm that as long as marijuana is considered an unlawful controlled substance under federal law, California courts and administrative agencies will recognize an employer's right to maintain policies against substance use including substance abuse testing and discipline up to and including termination for employees who fail substance abuse tests.**

## **B. SIX REASONS WHY EMPLOYERS HAVE SUBSTANCE ABUSE TESTING AND OTHER POLICIES AGAINST SUBSTANCE ABUSE?**

- 1. Applicants who are substance abusers will be problem employees.**
- 2. Employees who are substance abusers can create unsafe conditions in the workplace.**
- 3. Employees who are substance abusers are unreliable and reduce the productivity of other employees who have to pick up the slack.**
- 4. Employees who are substance abusers also with create serious safety problems and in some cases bring danger into the workplace.**
- 5. Employees who are substance abusers make serious mistakes and costly errors and rarely take responsibility for their actions.**
- 6. Employees who are substance abusers take undue advantage of an employer's health insurance and drive up workers compensation premiums.**

## **C. THE GOLDSTEIN LAW FIRM'S SUGGESTIONS FOR DEALING WITH PROPOSITION 64 IF IT PASSES**

- 1. Inform your executive, managers, supervisors and employees that the passage of Proposition 64 does not change your right as an employer to have a drug free**

workplace and workforce.

2. **Train your executives, managers, supervisor and employees regarding why the company has a substance abuse policy; the fact that the passage of Proposition 64 does not have any effect on the company's right to have a drug free environment.**
3. **Train your executives, manager and supervisors on the provisions of the substance abuse policy**
4. **Train your supervisors on the signs of substance abuse that would justify substance abuse testing of an employee tested for substance abuse.**
5. **If you have questions regarding your right to test employees for substance abuse under the new law legalizing recreational use of marijuana should it be passed by the voters, please contact The Goldstein Law Firm.**

#### **IV. GETTING READY FOR NEW CALIFORNIA LAWS THAT BECOME EFFECTIVE JANUARY 1,2017**

The California Legislature passed a number of bills that were signed by Governor Jerry Brown that will create problems for employers who are unaware of the law laws. The following lists of new laws is not meant to be exhaustive but does attempt to list major laws that will be discuss in more detail at The Goldstein Law Firm 39<sup>th</sup> annual seminar.

**Increase in California's minimum wage to \$10.50 in January 2017 and to \$15.00 by 2022. (SB 3)**

**Expand the California Equal Pay Act to include race and ethnicity-related wage differentials (SB1063)**

**Amend California Equal Pay Act to preclude prior salary history justifying gender-related wage differentials (AB 1676)**

**Expand the prohibiting unlawful "immigration-related practices. (SB 1001)**

**Prohibit hiring-related inquiries concerning juvenile arrests (AB 1843)**

**Require employers to provide notice of domestic violence law and accommodation rights. (AB 2337).**

**Amend the wage statement requirements to remove the duty to track hours**

**worked for many exempt employees. (AB 2535).**

**Preclude employment contract provisions requiring California employees to agree to non-California venues.(SB 1241)**

**Phase out overtime exemptions for agricultural workers (AB 1066)**

**Expand California’s heat illness regulations to include indoor employees (SB 1167)**

**Single-user restrooms must be “all gender” effective March 1, 2017. (AB 1732)**

**Department of Labor Standards Enforced (DLSE) enforcement authority has been expanded to give the DLSE to bring a lawsuit against an employer that terminates or discriminations against an employee in violation of any law under the Labor Commissioner jurisdiction. The DLSE can bring a lawsuit against an offending employer with or without the consent of the employee. (AB 2261).**

We will be discussing these new laws and their affect on your business at our 39<sup>th</sup> Annual Seminar.

**If you have questions regarding how these new laws with affect your business please contact The Goldstein Law Firm.**

**V. 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 and hour topics that would be of broad interest to the members of your organization. Our current speaking schedule is as follows:

- **October 26, 2016** – The Goldstein Law Firm 39<sup>th</sup> Annual Labor, Employment and Wage and Hour Law Seminar
- **October 26, 2016** (Evening) – 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**

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