

Law Report

LEGAL NEWSLETTER

VOLUME 8, ISSUE 2

CALIFORNIA'S NEW EMPLOYMENT LAWS *A Look at the Year Ahead*

In addition to new federal I-9 form amendments applicable to employers nationwide, Governor Schwarzenegger approved several new California employment-related laws for 2008. If your company is located outside California, please note these new state laws as possible models for future regulation in your home states.

New I-9 Forms. Effective December 26, 2007, the revised Form I-9 must be used for all new hires. The revised form has eliminated certain documents previously used to determine employees' U.S. citizenship. The following documents will no longer be valid:

Beginning January 1, 2008, an employer must pay exempt-from-overtime executives, administrators and professionals a minimum salary of \$2,773.33 monthly or \$33,280 annually

(Form N-560 or N-561); Certificate of Naturalization (Form N-550 or N-570); Alien Registration Receipt Card (Form I-151); the unexpired Reentry Permit (Form I-327); and the unexpired Refugee

Travel Document (Form I-571). These documents were eliminated from the I-9 because they were not secure enough to prevent counterfeiting, tampering, and fraud. The revised Form I-9 also added Unexpired Employment Authorization Document (I-766) to List A of Acceptable Documents. You can download both the English and Spanish versions of the new I-9 at this site: <http://www.uscis.gov/I-9>.

State Minimum Wage Increases to \$8.00 per Hour. On January 1, 2008, California's hourly minimum wage increased from \$7.50 to \$8.00. Labor Code § 1182.12.

This increased minimum wage requires employers to re-evaluate salary levels for exempt-from-overtime executive, administrative and professional employees. Presuming all the other requirements are in place, only employees paid a salary equivalent to twice the state minimum wage for a 40 hour week qualify for the overtime exemption. Beginning January 1, 2008, the minimum monthly salary for exempt employees will thus be \$2,773.33 (or \$33,280 annually).

Commissioned inside salespeople who are exempt from overtime must earn at least one and one-half times the minimum wage for hours worked. Thus, commencing January 1, 2008, such salespeople must earn the

equivalent of \$12.00 per hour for a 40 hour week (\$480) with at least half that earned from commissions (\$240).

The law requires employers to display the California posters showing the minimum wage increase for 2008. The poster created for January 1, 2007 has the updated wage increases for 2008 included on it. Thus, a new minimum wage poster would not be necessary for 2008. Labor Code § 1182.13.

Hourly Minimum Pay to Meet Exemption for Computer Professionals Lowered. Beginning January 1, 2008, California's computer software overtime exemption statute

To qualify for the computer worker exemption, a company employing an otherwise qualified person for an average of 60 hours weekly now at minimum must pay that person a \$9,360 monthly salary or \$112,320 annually

reduced the qualifying hourly rate computer workers from \$49.77 to \$36.00. Thus, qualified computer workers must now earn in excess of \$6,240

monthly or \$74,880 annually to be potentially eligible for overtime exemption under this category. Employers who pay such a worker on a monthly or annual salary basis should exercise caution under this exemption

On July 1, 2008, it will be illegal in California to drive while speaking on a hand-held cell phone

option as that person's compensation must cover *each hour* actually worked at that \$36.00 per hour minimum rate. For example, if a qualifying computer worker is to put in an average of 60 hours weekly throughout 2008, it would take an annual salary of \$112,320 (60 hours weekly x 52 weeks x \$36.00) or a monthly salary of \$9,360 to qualify. (The Department of Industrial Relations shall determine

Please see "NEW LAWS" page 2

The Law Offices of Timothy Bowles work primarily in employment and health care fraud law; mediation; arbitration; and civil litigation. While published articles convey the firm's views on topics it has found concern many of its clients, the articles are not intended and should not be considered legal advice. Such professional advice requires full disclosure to an attorney of a client's circumstances and that attorney's opportunity to analyze those circumstances against applicable law.

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Employment Laws*

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mine the 2009 minimum hourly rate for this exemption on or before October 1, 2008.) Senate Bill 929.

Additional Restrictions on Using or Displaying Employee Social Security Numbers.

Revised Labor Code Section 226 went into effect January 1, 2008 to protect against unauthorized access to employee social security numbers (SSNs). Employers may not post SSNs publicly and thus must ensure that all SSNs used on the internet are protected by encryption, passwords, and other forms of security to protect from identity theft and other ramifications of stolen SSNs. Itemized wage statements must show either the employee's last four SSN numbers only or individualized identification numbers. Labor

Code Section 226(a)(7).

Law Passed Prohibiting Hand-Held Cell Phone Usage While Driving.

California is now the sixth state in the U.S. to outlaw driving while talking on a hand-held cell phone, joining Connecticut, New Jersey, New York, Utah, Washington, and the District of Columbia. The law goes into effect on July 1, 2008. If you provide your employees with

If employees need to make business-related calls while driving, consider providing them with hands-free capabilities for their phones

cell phones, you must educate them on how to use them properly in their cars. If employees need to make calls while dri-

ving, consider providing them with hands-free capabilities for their phones. You may also need to create a policy prohibiting employees from answering their cell phones while driving on the job or alternately requiring them to pull over when answering a call. Senate Bill 1613.

Time Off for Employees with Spouses on Military Leave.

If a company has 25 or more employees it must allow a qualifying employee up to 10 days of unpaid time off when his or her spouse is home for military leave. To qualify, the employee must work more than 20 hours per week and must give his or her employer notice of the leave within two business days of receiving official word of the impending military leave. The employee must also provide documentation verifying the dates of his/her spouse's military leave. The military spouse

must be a member of the Armed Forces, National Guard or Reserves. Assembly Bill 392.

Please contact our office if you would like more information on any of these new laws

Employers with 25 or more workers now must allow a qualifying employee up to 10 days of unpaid time off when his or her spouse is home for military leave

or any of the other changes on workplace regulation for 2008. Please also contact us on any update of your employment forms and handbook to comply with these new laws. We wish you a productive and enjoyable new year.