

MINIMUM WAGE INCREASE COMING SOON

By Olivia Goodkin & William Kampf

What is the new law?

On September 12, 2006, Governor Arnold Schwarzenegger signed into law Assembly Bill 1835 that will increase California's minimum wage to \$8.00 per hour by January 1, 2008. The compromise by Governor Schwarzenegger and the Legislature comes after two previous bills proposing to increase the minimum wage were vetoed by the Governor. Unless other states also increase their minimum wage, California's minimum wage of \$8.00 per hour will be the highest minimum wage in the United States.

Under AB 1835, the \$1.25-increase of the current minimum wage of \$6.75 per hour in California will be implemented in two stages. The first stage will increase the minimum wage by seventy-five cents (75¢) to \$7.50 per hour on January 1, 2007. The remaining increase of fifty cents (50¢) takes effect on January 1, 2008, bringing the total minimum wage rate to \$8.00 per hour.

How does the minimum wage increase affect who is considered "exempt" from overtime pay?

The increase in the California minimum wage affects more than just the minimum rate of pay to be paid to hourly employees. California employers must also be mindful that any time there is an increase in the California minimum wage, the minimum annual salary required to be paid to employees who qualify as exempt from overtime and other related provisions under the Industrial Welfare Commission ("IWC") Wage Orders also increases.

For example, in addition to the numerous other requirements contained in the IWC Wage Orders, an employee must earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment to qualify as exempt under the executive, administrative, and professional exemptions maintained in the IWC Wage Orders. Full-time employment is defined as 40 hours per week. At the current rate of \$6.75 per hour, this means that qualifying exempt executive, administrative, and professional employees must be paid a minimum annual salary of \$28,080.00. As a result of the increase in the minimum wage to \$7.50 per hour and then to \$8.00, the minimum annual salary for these classes of exempt employees shall increase to \$31,200.00 beginning January 1, 2007, and to \$33,280.00 beginning January 1, 2008.

If employers do not increase the salaries of exempt employees to meet these new minimums, then the previously exempt employees are deemed to be converted to non-exempt employees, and will be entitled to overtime pay. It is therefore very important for human resources departments to review the pay structure for employees in the pay range affected and to ensure that appropriate adjustments are made.

What about salespersons who are paid commissions?

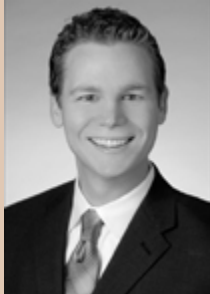


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Other affected exempt employees include those who qualify as inside salespersons under IWC Wage Orders 4 and 7. Inside salespersons are those whose earnings exceed one and one-half times the minimum wage. In addition, more than half of the salespersons' compensation must be comprised of commissions. Thus, to qualify under the inside salesperson exemption, an employee currently must earn a minimum of \$10.13 per hour. Starting January 1, 2007, the minimum hourly rate will increase to \$11.25 per hour, and beginning January 1, 2008, the minimum hourly rate for an inside salesperson must will be \$12.00 per hour.



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Does the new law apply to union employees?

Those employers with a union workforce are also affected by the new minimum wage increase. For unionized employees to be exempted from California's overtime laws, the collective bargaining agreement must expressly provide for the wages, hours of work, and working conditions of the employees. Further, the collective bargaining agreement must provide premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30% more than the state minimum wage. At the current minimum wage rate, the regular hourly rate of pay must be at least \$8.78 per hour. On January 1, 2007, the regular hourly rate of pay must be at least \$9.75 per hour, and starting January 1, 2008, it must be at least \$10.40 per hour.

What are other effects of the new law?

The increase in the minimum rate of pay goes beyond simply determining whether an employee is exempt or not. Where an employee must provide his or her own tools or equipment that are customarily required by the employee's trade or craft, the employee must earn at least two times the minimum wage. At the current rate, the employee must earn at least \$13.50 per hour. This minimum rate of pay increases to \$15.00 per hour on January 1, 2007 and \$16.00 per hour on January 1, 2008. The minimum wage also affects the split-shift premium rate owed to employees (which requires one hour's pay at the minimum wage in addition to the minimum wage for that workday); meal and lodging credits (which are specifically listed in the new IWC Minimum Wage Order); and the amount owed to employees where the employer requires uniforms but does not maintain them (one hour's pay per week at the minimum wage rate).

As you can see, the increase in California's minimum wage causes a substantial ripple effect. Employers must be prepared to make adjustments to their payrolls on both January 1, 2007 and January 1, 2008, otherwise they may be subject to significant liability to their employees and the State of California.

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