BREAKING NEWS: California’s Minimum Wage Goes Up—But There Are Some Pitfalls Employers Need to Avoid

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Minimum wage earners across the state are celebrating.

This morning, Governor Jerry Brown signed AB 10 into law, raising California’s minimum wage to $10 per hour by January 2016. The first increase will go into effect on July 1, 2014, raising the minimum wage to $9 per hour. And the jump to $10 per hour will take place on January 1, 2016.

The last time that California had an increase in the minimum wage was in 2008, when it was increased by 50 cents to $8 per hour. Before the law passed, California’s minimum wage—although higher that the national minimum wage of $7.25 an hour—was lower than that of states like Illinois ($8.25) and Oregon ($8.95). Currently, the state of Washington has the highest state minimum wage rate at $9.19 per hour.

Unlike Washington’s minimum wage, which is pegged to rise with inflation, California’s minimum wage will stay at $10 per hour until the next time the California legislature takes action to increase it.

Some California cities have already raised the minimum wage that employees in those cities receive. As covered on our firm blog in “San Jose Minimum Wage is Now $10.00 Per Hour,” the city of San Jose’s new minimum wage came into effect in March of 2013. Last January, the city of San Francisco’s minimum wage increased to $10.55 per hour, making San Francisco’s the highest minimum wage in the country.

Practical Implications for Employers

Aside from complying with the minimum wage itself, employers must examine whether the increase will take them out of compliance in other areas of wage and hour law that are dependent upon the value of the state minimum wage. For example, an element of several exemption tests under various California wage orders requires the employee to receive a monthly salary equivalent to no less than two times the state minimum wage. Likewise, California’s commissioned salesperson exemption applies only to employees whose earnings exceed one-and-a-half times the minimum wage if more than half of the employee’s compensation represents commissions. As such, the increase in the state minimum wage likely will result in certain individuals falling below these critical salary thresholds thereby triggering misclassification liability and penalties.
Moreover, other areas of wage and hour law will likely be impacted. The increase in the minimum wage could potentially create exposure under California split shift regulations, undermine existing agreements to credit the value of meals and lodging against the minimum wage, render obsolete agreements to pay employees at reduced hourly rates for travel or on-call time, or impact the viability of overtime provisions contained in collective bargaining agreements.

Employers should not wait until each successive increase in 2014 and 2016 to address the impact of the minimum wage increase by auditing and making adjustments to their practices, timekeeping systems, or existing agreements. Those efforts should be undertaken as soon as possible for employers to have sufficient lead time to address issues that may arise.