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Wage and Hour Pitfalls: What California Employers Need to Know in 2017

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It is a privilege to live and do business in the great state of California. However, California employers face significant regulatory burdens, not the least of which is the California Labor Code. Non-compliance with the Code can result in significant damages and penalties for employers. California's detailed wage and hour laws regulate minimum wage and overtime, equal pay, and paystubs, among other things. While certain statutory violations may seem trivial, they may nonetheless result in significant liability. This is especially true given the increasing use of the Private Attorneys General Act (PAGA) by plaintiffs' lawyers, a statutory scheme which creates additional civil penalties for labor code violations above and beyond the statutory penalties, which have long been available to plaintiffs. Employers should be aware of the new developments in these areas.

Minimum Wage Requirements And Exempt Employees
Employers must pay hourly employees (non-exempt, non-union employees) the minimum wage. The California minimum wage is currently $10.00 per hour, but (for employers with 26 employees or more) it will increase to $10.50 per hour on January 1, 2017 and to $11.00 on January 1, 2018, with an increase of $1.00 every year thereafter until it reaches $15.00 per hour on January 1, 2022. Employees who work more than 8 hours in a day or 40 hours in a week are also entitled to overtime compensation at the rate of 1.5 times the normal rate of pay, or 2.0 times the normal rate of pay for work in excess of 12 hours per day. Certain executive, administrative and professional employees are exempt from overtime laws, but California law requires that exempt employees earn at least two times the state minimum wage for full time employment (40 hours per week) in addition to meeting other requirements.

In 2016, the Federal Department of Labor issued new regulations which would have preempted California law, effective as of December 1, 2016, and required employees to earn $47,476 per year (more than two times the current state minimum wage) in order to qualify as exempt. However, on November 22, 2016, a federal judge in Texas granted a nationwide preliminary injunction blocking the Department of Labor's rule from taking effect. The ultimate outcome of the federal regulation is now uncertain.

However, California employers still must comply with California laws. Based on a minimum wage of $10.50 per hour in 2017 and full time employment, exempt employees in California must make at least $43,680 per year in 2017. Higher levels of annual compensation will be required in each successive year until 2022 based on the minimum wages stated above. Accordingly, California employers should be careful to examine the compensation levels of their exempt employees each year to ensure compliance with these changing standards.

The Fair Pay Act
Another hot topic is California's Fair Pay Act, which was amended effective January 1, 2016, and is now perhaps the most stringent such law in the country. The law requires equal pay for employees of the opposite sex performing "substantially similar work, when viewed as a composite of skill, effort and responsibility." While women and men certainly deserve equal pay for equal work, the amended law eliminates certain defenses for employers, including making it more difficult for employers to satisfy the "bona fide factor other than sex" exception. Additional amendments to the Fair Pay Act will go into effect on January 1, 2017 which will expand the law to apply to pay disparities based on race or ethnicity as well. While relatively few cases have been brought under the amended act, many legal experts believe that this is the next frontier of employment litigation. Employers should conduct an internal review of wage rates paid to employees performing substantially similar work in order to ensure compliance with the law.

Litigation Regarding Paystub Records
Paystub records also continue to be a heavily litigated area of employment law. California requires paystubs to include a long list of information, including gross wages, hours worked, the name of the employee and only the last four digits of his or her social security number, and the name and address of the employer, among other things. Statutory penalties of up to $4,000 per individual are available for such violations. Plaintiffs' attorneys often seek additional PAGA penalties regarding the exact same violations. The result is that very minor and seemingly insignificant omissions on employee paystubs may add up to very significant liability, especially in the class action context. Employers should periodically review the information contained on paystubs to ensure that it is compliant with California law.

For more information on any of these topics, please feel free to contact me directly at scriqui@stuartkane.com.

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Shane Criqui is a partner with Stuart Kane LLP where he focuses his practice on employment, business and real estate litigation. Mr. Criqui has significant experience with both jury and court trials as well as arbitrations and Labor Commissioner hearings. He has worked with clients involved in multiple business verticals including technology, healthcare, retail, real estate, banking, legal services, manufacturing and distribution. Mr. Criqui has continuously been selected to the Southern California "Rising Stars" list by Super Lawyers magazine. Mr. Criqui can be reached at 949.791.5126 or scriqui@stuartkane.com.