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California's Stepped Increase in Minimum Wage Affects More Than Just Nonexempt Employees

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On September 25, 2013, Governor Jerry Brown signed Assembly Bill 10 into law. This bill amends California Labor Code section 1182.12 to increase the minimum wage (currently \$8.00 per hour) in two increments over the next several years. First, effective July 1, 2014, the minimum wage will increase to \$9.00 per hour. Second, effective January 1, 2016, the minimum wage will again increase to \$10.00 per hour. The cumulative raise by 2016 will be 25%. This marks the first increase in California's minimum wage in six years. Employers should be aware of the broad implications of such a change.

First and foremost, employers must increase the hourly rate of employees earning minimum wage. In addition, pay rates for overtime, vacation, sick leave, paid time off, and meal and rest period premiums must increase as well. Failure to do so may result in significant liability to employers for wage and hour violations.

Moreover, the minimum wage increase also affects exempt employees. To qualify for the administrative, executive, or professional exemption, employees must earn an annual salary of at least twice the minimum wage (currently, \$33,280 per year). Employers must evaluate whether the salaries of their exempt employees meet the new salary requirements. As a result of the amendment, the minimum exempt employee salary will increase to \$37,440 per year, effective July 2014, and to \$41,600 per year, effective January 2016. Failure to pay such salaries may result in misclassification claims, which could result in liability to employers for failure to pay overtime, failure to provide meal and rest periods, and other derivative claims.

Moreover, this increase will also affect the commissioned sales employee exemption. To qualify, these employees must earn more than 1.5 times the minimum wage for all hours worked (currently, \$12.00 per hour; will be \$13.50 as of July 2014 and \$15.00 per hour as of January 2016). However, this increase will not affect the computer professionals exemption as the Division of Labor Standards Enforcement independently determines the rate for this classification.

As July 2014 and January 2016 approach, employers are encouraged to review employees' wages to ensure compliance with the minimum wage increases and their derivative requirements. Moreover, employers should review timekeeping and payroll procedures to ensure that rates for overtime, vacation, sick leave, paid time off, and meal and rest period premiums comport with the new law. Be sure to calendar these dates as reminders to check in with counsel.

The minimum wage increase will also impact specific industries and select employer policies, including the construction industry, employers that provide meals and/or lodging to employees, and employers that pay travel rates at the minimum wage rate.

Although the information contained herein is provided by professionals at Procopio, the content and information should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

If you have any questions, please contact Marie Burke Kenny or Annie Macaleer. Both are also presenting at Procopio's Annual Labor and Employment Seminar on October 29, 2013, from 1:00pm to 6:00pm at the Hilton La Jolla Torrey Pines. The seminar will cover this topic as well as other California employment law developments. [For more information and to register, please click here.](#)

Marie Burke Kenny is a partner and leader of the firm's Labor and Employment practice group. She represents employers in federal and state court litigation involving wage and hour, wrongful termination, discrimination, harassment, retaliation, and unfair competition claims. Ms. Kenny also represents employers in mediation, arbitration and state and federal agency proceedings. She has extensive experience counseling employers regarding all aspects of the employment relationship and works with employers to develop strategies to prevent employment claims and create effective defenses to litigation. Ms. Kenny counsels employers regarding performance management, termination, contracts, workplace investigations, medical issues, leaves of absence, and employment policies and practices. She is also an adjunct professor of employment law for San Diego State University's Human Resources Certification Program. She can be reached at 619.525.3876 or marie.kenny@procopio.com.

Annie Macaleer is an associate with the firm's Labor and Employment practice group. She represents employers in federal and state courts against a broad variety of claims, including discrimination, harassment, retaliation, wrongful termination, unfair competition, breach of contract, wage and hour, and other statutory claims. In addition to defending employment litigation matters, Ms. Macaleer counsels employers on effective ways to reduce the risk of litigation by advising on employment policies, employee handbooks, employment agreements, and other human resource issues and strategies. She can be reached at 619.906.5741 or annie.macaleer@procopio.com.