

California Minimum Wage Increases on January 1, 2023

Article provided courtesy of SAHRA legal team partner Palmer Kazanjian

By January 2023, all California employers will be required to pay a minimum wage of \$15.50. To maintain compliance, it is important to review federal, state, and local laws as applicable to each employer.

Federal, State, and Local Laws Vary in Minimum Wage Requirements

Federal Law

As of 2022, federal minimum wage is \$7.25. Under the Federal Labor Standards Act (“FLSA”) employers with employees in commerce or working in the production of goods for commerce are required to pay covered non-exempt employees the federal minimum wage amount.

Federal minimum wage allows for averaging. In *Douglas v. Xerox Business Services, LLC*, employees earned different rates depending on each task and the time spent on the task. Xerox calculated pay by the sum of the amounts for each task and divided by the number of hours of work for that week. If the ratio fell below minimum wage, the employer provided a subsidy to ensure employees received the minimum wage. The Ninth Circuit concluded that the per-workweek measure was a “feasible and permissible interpretation of the statute.” Thus, employees are being paid according to the federal minimum wage standards when their salaries are averaged across the workweek, even if the wage varies. Unfortunately, as noted below, this averaging does not fully comply with California minimum wages obligations and has limited applicability for most California employers.

Employers who violate the FLSA minimum wage requirements may be liable for damages of unpaid overtime, an additional equal amount of liquidated damages, and reasonable attorney’s fees and costs.

California Law

The FLSA permits greater protections for employees under state law. California’s minimum wage must be at least equal to the federal minimum wage. California authorizes the legislature to set minimum wage standards. Since January 2017, California minimum wage increased from \$10.50 to \$15.00. As of 2022, the minimum wage is \$15.00 an hour for employers with 26 or more employees and \$14.00 an hour for employers with 25 or less employees. It was recently announced that due to inflation rates, minimum wage must increase to \$15.50 regardless of the number of workers employed by an employer, effective on January 1, 2023. Employees cannot waive their right to minimum wage, including in collective bargaining agreements.

California requires that workers must receive the minimum wage for *each hour* worked during the payroll period or the contractual hourly rate, whichever is greater. Thus, the averaging method noted above to comply with the federal minimum wage standard does not apply to California minimum wage requirements.

Similar to the FLSA, employees who are paid less than the minimum wage may bring claims of liquidated damages. In *Sillah v. Command Int’l Security Serv.*, the plaintiff (former employee) should have received \$28,864, but was only paid \$17,075. Therefore, the plaintiff was entitled to \$11,789 in liquidated damages. Employers paying less than minimum wage may also be subject to civil penalties, restitution, and attorney’s fees.

Local Law

Some California cities enact local ordinances establishing higher minimum wage standards compared to federal and California law. This is expressly authorized by the FLSA under 29 U.S.C.A. § 218 and the California Constitution under Article XI, § 7. In *Marquez v. City of Long Beach*, the Court held that the legislature sets a floor based minimum income necessary for a living wage within the state, but “the City retains authority to provide wages for its employees above that minimum as it sees fit.”

Sacramento’s minimum wage is \$15.00. However, other cities, such as Emeryville, have a minimum wage of \$17.13. Employers should review whether their city imposes minimum wage requirements separate from California law and the conditions upon which the local minimum wage is applied and enforced. As California minimum wage will increase to \$15.50, cities may increase their local minimum wage requirements accordingly.

Exempt Employees are Not Subject to Minimum Wage Requirements

Both federal and California laws recognize certain employees, whose primary duties are within an executive, administrative, professional capacity, or as an outside salesperson, as exempt from the minimum wage requirement.

According to the United States Department of Labor, Wage and Hour Division, the exempt or nonexempt status of an employee is determined by a salary and duties test rather than the job title alone. As of 2020, the salary basis test provides that an employee must be compensated at least \$684 per week to qualify as an exempt employee under federal law, but state law requirements are also applicable and often have higher salary rate standards.

Similarly, the California Labor Code establishes exemptions to the minimum wage requirement if the employee meets the applicable salaries and duties test. The salary test provides that an exempt employee must earn a monthly salary equivalent to not less than two times the state minimum wage as a full-time employee. As of 2022, this amount is \$58,240 for employers with 25 or fewer employees and \$62,400 for employers with 26 or more employees. California employers should note that minimum wage increases to \$15.50 for all employers regardless of employee size next year. The salary basis will increase accordingly.

Exemptions may also serve as an affirmative defense to allegations of failure to pay minimum wage and overtime.

Employers Should Review Applicable Laws, Pay Rates, and Employee Classifications

In sum, when dealing with minimum wage and salary obligations, California employers are required to comply with applicable federal, state, and local laws. When these laws conflict, generally the higher standard will be applicable. Employers should diligently review and comply with local ordinances, increasing minimum pay standards, and relevant exemption classifications to avoid violations.