

Changes to Labor Law

In the past two years, several major changes to labor laws have been made at the state level. Additionally, impending federal rules from the Department of Labor will also impact many employees and nearly all employers.

Four areas are at issue: Sick leave, minimum wage, disability insurance/family leave, and salaried employees. Single-page summaries of the changes to each of those areas are provided here, with links to relevant supporting documents. These summaries are meant to provide a basic overview, and should not be considered as legal advice.

Sick Leave

[AB 1522](#) (Chapter 317, 2014)

Requires employers to provide sick leave to employees, with specifications as to accrual rates, expiration of leave, and other operational considerations.

- Employees (including temporary and seasonal workers) who work at least 30 days in a year with an employer are owed sick leave, at a rate of one hour leave per 30 hours worked.
- Sick pay is paid at the same hourly rate as regular pay.
- (FLSA-)Exempt employees are considered to work 40 hours per week, unless they normally have a shorter week, which then forms the basis for leave accrual.
- Sick leave can be used:
 - Starting 90 days after employment;
 - As it accrues;
 - For their needs or the needs of a family member;
 - For as many hours as needed and accrued (with reasonable minimums permitted);
 - By giving advance notice if the leave is foreseeable (*e.g.*, a doctor's appointment);
 - For up to a year after being earned – that is, there is a one-year rollover.
- Sick leave accrual may be limited to 48 hours/6 days. This correlates to the one-year rollover of accrued leave.
- Edited for relevance to the developmental services system, the following exemptions apply:
 - Employers whose employees accrue at least as much leave as provided above;
 - Employees covered by collective bargaining and receiving at least as much leave as provided above;
 - IHSS workers (as defined in W&I Code §§ 12000 et seq, 14132.95, 14132.952, or 14132.956).
- When an employee separates from an employer, sick leave hours do not have to be paid out.
 - But if the employee is rehired within a year, previously-earned sick leave is immediately usable.
- Sick leave, when taken, has to be paid at the next pay check.
- All employers – presumably including those who are otherwise exempt from this law – must notify employees of the leave they have accrued at each pay check. This may be given with the pay stub or separately.
- All employers – presumably including those who are otherwise exempt from this law – must post various notices concerning sick leave laws.
- Employers must keep records of all hours worked/leave accrued by employees for three years.
- There are fines for failure to comply, or for discriminating against an employee for using sick leave.
- Accrual begins no sooner than July 1st, 2015 for all current employees.

Minimum Wage

SB 3 (Chapter 4, 2016)

Provides for staggered increases in the minimum wage, to \$15/hour. Additional increases tied to inflation. Also mandates paid sick leave for IHSS workers.

- In various increments, the minimum wage will be raised, topping out at \$15/hour on January 1, 2022. For employers with 25 or fewer employees, each step is delayed by one year. Thus, for them, the final step to \$15/hour is on January 1, 2023.
- Steps for employers with over 25 employees are as follows:
 - Starting January 1, 2017 - \$10.50/hour
 - Starting January 1, 2018 - \$11.00/hour
 - Starting January 1, 2019 - \$12.00/hour
 - Starting January 1, 2020 - \$13.00/hour
 - Starting January 1, 2021 - \$14.00/hour
 - Starting January 1, 2022 - \$15.00/hour
- Starting January 1, 2024, and every January 1st thereafter, the minimum wage will be increased by either 3.5% OR the prior fiscal year's inflation index, whichever is smaller. This amount will be rounded to the nearest dime. But if inflation is negative, the rate will be unchanged that year.
 - For example, the January 1, 2024 increase will use the inflation data from July 1, 2022 through June 30, 2023. It will be calculated by the Dept. of Finance by August 1, 2023.
- In July of any given year, but only until the minimum wage hits \$15/hour, the Governor can implement a one-year across-the-board pause on these increases. This may be done twice, but only if employment levels decrease, or a deficit is predicted. Specifically:
 - The first way is if, in July, either:
 1. The employment level is lower in June than it was in April OR
 2. The employment level is lower in June than it was in DecemberAND sales/use tax receipts for that year are lower than they were the year before.
 - The second is if the Department of Finance predicts a state Budget deficit as a result of an upcoming minimum wage increase in the current or two following fiscal years.
- During 2022, if calculations show that from July 1, 2020, through June 30, 2021, inflation was over 7.0% (compared to the same time frame the year prior), the minimum wage for businesses with 25 or fewer employees will immediately be moved up to \$15/hour.

Disability Insurance/Family Leave

[AB 908](#) (Chapter 5, 2016)

California law provides for disability insurance and paid family leave. With the passage of this bill, a number of changes that will temporarily increase benefits (and access) have been implemented.

- California workers are entitled to, among others, two particular types of leave; Paid Family Leave and State Disability Insurance. Paid Family Leave (PFL) allows individuals paid time off of work to care for a family member who is ill, or to bond with a child. This is **not** the same as the (federal) Family and Medical Leave Act. State Disability Insurance (SDI) provides partial replacement of lost earnings to employees injured while off the job, or pregnant.
- Both programs are funded by a payroll tax paid by the employee. For all entities, including non-profits, this tax rate is set by the state. Adjustments to payroll programs must be made whenever the rate changes.
- This law creates two benefit tiers for both PFL and SDI, replacing the current single 55% wage replacement rate.
 - For individuals earning less than 1/3rd of the statewide average weekly wage, for both PFL and SDI the wage replacement rate will be 70%.
 - For individuals earning at or above 1/3rd of the statewide average weekly wage, for both PFL and SDI, the wage replacement rate will be 60%, with a minimum of at least 23.3% of the statewide average weekly wage.
- This law also eliminates a seven-day waiting period before PFL benefits can begin.
- All changes go into effect starting January 1st, 2018.
- On January 1, 2022, wage replacement rates for both PFL and SDI will return to the 55%.
- It is anticipated that the payroll tax will be increased by a fraction of a single percentage point to cover the increased payments, though a precise number has not yet been determined. Once determined, that line item paycheck deduction will have to be changed accordingly.
- It should be noted that, during this period, the Employment Development Department will be preparing and submitting reports about the impacts of these various changes. The implication is that the 2022 sunset might be repealed, making the higher levels permanent. Insufficient data exists at this time to predict the likelihood of that outcome.

Salaried Employees

The mandatory minimum salary an FLSA-exempt employee must receive is going to increase significantly in coming years. This is driven by both the previously-described changes to minimum wage, as well as a Federal rule on the “salary basis” component of exempt work.

- California employees are covered by [17 wage orders](#), which regulate wages, hours, and working conditions of various industries. Sixteen are industry-specific, and the 17th is a catch-all.
- In the developmental disabilities services system, the most common wage orders are:
 - [Wage Order 4](#) – Profession, Technical, Clerical, Mechanical and Similar Occupations
 - [Wage Order 5](#) – Public Housekeeping Industry
 - [Wage Order 9](#) – Transportation Industry
 - [Wage Order 15](#) – Household Occupations
- For virtually all industries, including Wage Orders 4, 5, 9, and 15, overtime and other requirements need not apply to certain employees – that is, they are “exempt” from those requirements. They are most commonly managerial or administrative staff. This is not just a position title, though. Various job duties and responsibilities are involved in legally qualifying for this exemption. To merely title someone a manager in order to make them exempt is illegal.
- Exemption is the employer’s choice. If an employer does not wish to meet current or proposed requirements, relevant employees may be paid an hourly wage, with overtime, as appropriate.
- **California law requires exempt employees to be paid twice the state minimum wage.** This is called the “salary basis” test; if an employee’s salary does not pass that test, they cannot be exempt from overtime. The current minimum monthly salary is \$3,466.67 (\$41,600/year).
- Each increase in the state minimum wage will require that all salaried employees be paid a commensurate, and newly-increased, minimum salary. Steps for employers with over 25 employees are as follows, with smaller employers lagging one year behind:
 - Starting January 1, 2017 - \$3,640/month (\$43,680/year)
 - Starting January 1, 2018 - \$3,813.33/month (\$45,760/year)
 - Starting January 1, 2019 - \$4,160/month (\$49,920/year)
 - Starting January 1, 2020 - \$4,506.67/month (\$54,080/year)
 - Starting January 1, 2021 - \$4,853.33/month (\$58,240/year)
 - Starting January 1, 2022 - \$5,200/month (\$62,400/year)
- [Federal regulations](#) also have an exemption, with job duty and salary requirements. However, the salary level has long been superseded by California’s stricter requirements. A [just-approved rule](#) updates the federal salary level, and now takes precedence.
- The rule was finalized in mid-May. Starting December 1st, it raises the limit to \$3,956.33/month (\$47,476/year), & automatically updates every three years. Between December 1, 2016, and January 1, 2019, exempt California employees have to be paid at the (higher) federal minimum salary level. After, California’s (then-higher) minimum requirements would again apply. Depending on state and federal automatic update mechanisms, there may be other periods when the minimum salary is set at the federal level.
- The federal Department of Labor subsequently announced that, for Medicaid-funded residential facilities with 15 or fewer beds, serving people with developmental disabilities, they will [not enforce this regulation](#) until March 18, 2019. Employers are still required to meet these new salary requirements, and employees can sue for violations – but there will be no active enforcement efforts by the Department.