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NATIONAL ACCOUNT SERVICES

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FAIR PAY AND SAFE WORKPLACES FINAL RULE RELEASED

On August 24, 2016, the Federal Acquisition Regulation Council ("FAR Council") published the final rule regarding Executive Order ("E.O.") 13673, Fair Pay and Safe Workplaces. E.O. 13673 applies to procurement of federal contracts in excess of $500,000. The concept behind the measure is to ensure that government contracts are awarded only to businesses that have a demonstrated record of compliance with 14 federal workplace fairness and safety laws, including the National Labor Relations Act (NLRA), Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act of 1964, the Family and Medical Leave (FMLA), the Occupational Safety and Health Act (OSHA), and others.

To be eligible for these government contracts, businesses must report on their record of "compliance with labor laws." Eventually, federal subcontractors under covered contracts will be required to submit reports detailing their own compliance with federal employment law. It also requires such contractors and subcontractors to establish special paycheck notifications for employees working on any contracts that are subsequently awarded and, for contracts in excess of $1,000,000, prohibits contractors from imposing mandatory arbitration of employment law claims.

The Final Rule will be phased in over time, with the following key dates:

- October 25, 2016: prime contractors bidding on covered contracts valued at $50 million or more become subject to the E.O.'s federal employment law compliance reporting requirements, and all contractors and subcontractors with federal contracts of more than $1,000,000 (contracts and subcontracts for commercial items are excluded) will be subject to the prohibition on mandatory arbitration.

- January 1, 2017: all contractors and subcontractors with federal contracts of more than $500,000 (subcontracts for commercially available off-the-shelf items are excluded) will be subject to the Paycheck Transparency rules described below. Current, existing federal contracts will not be affected by these rules; only contracts entered into on or after January 1, 2017 are affected.

- April 25, 2017: prime contractors bidding on covered contracts valued at more than $500,000 become subject to the compliance reporting requirements.

- October 25, 2017: subcontractors bidding on covered subcontracts valued at more than $500,000 (subcontracts for commercially available off-the-shelf items are excluded) become subject to the compliance reporting requirements.

Paycheck Transparency Rules

The most critical piece of the provision from a payroll perspective is referred to as "Paycheck Transparency." This portion of the E.O. requires that contractors provide: (1) wage statements to individuals working for them; (2) overtime exemption notices to employees exempt from the overtime requirements of FLSA for whom the contractor does not want to include hours-worked information; and (3) documentation to workers treated as independent contractors notifying them of their status as independent contractors.

1) Wage Statement Requirements

The E.O. requires that contractors include the following information on wage statements:

- Total Hours Worked
- Overtime Hours
- Rate of Pay
- Gross Pay
- Itemization of each addition to or deduction from gross pay

a. Specific Requirements

While contractors must include both gross pay and the rate of pay, the rule does not require that contractors specify the *overtime* rate. The rationale for this is that employees should be able to ascertain the overtime rate they should have earned based on the report showing hours worked and rate of pay.

Another requirement is that the required wage statement information be broken down by week, even where contractors' payrolls are bi-weekly or semi-monthly. This is because if hours and rates of pay were lumped together for periods longer than a week, employees would not be able to tell whether they were entitled to overtime. For instance, an employee could have worked 45 hours in week 1 of the pay period and 35 hours in week 2, and his or her wage statement would still reflect 80 hours worked for that 2 week period, even though the employee actually was entitled to 5 hours of pay at the overtime premium rate.

b. Substantially Similar State Laws

As long as a contractor complies with the wage statement requirements of any of certain, defined Substantially Similar Wage States, the contractor will be in compliance with the rule. Currently, the following states are considered Substantially Similar Wage States: (1) Alaska; (2) California; (3) Connecticut; (4) District of Columbia; (5) Hawaii; (6) New York; and (7) Oregon.

c. Effective Date

Beginning January 1, 2017, the wage statement requirement clause will be inserted in solicitations if the estimated value of the resultant contract exceeds $500,000.

2) FLSA Exempt-Status Notification

Wage statements provided to FLSA-exempt employees are not required to delineate hours worked IF the contractor has provided the exempt employees with a written notice stating that they are exempt from the overtime requirements of the FLSA. As far as how often this notice must be provided, it is sufficient to provide notice to workers one time before the worker performs any work under a covered contract, or in the worker's first wage statement under the contract. If during performance of the contract, the contractor determines that the worker's status has changed from nonexempt to exempt, it must provide notice to the worker prior to providing a wage statement without hours worked information or in the first wage statement after the change. The notice must be in writing; oral notice is not sufficient. The notice can be a standalone document or be included in the offer letter, employment contract, position description, or wage statement provided to the worker.

3) Independent Contractor Notification

If a contractor treats an individual performing work under a covered contract as an independent contractor and not as an employee, the E.O. requires that the individual be informed in writing. Contracting agencies, in turn, must require that contractors incorporate this same requirement into covered subcontracts. The notice must be in writing and provided separately from any independent contractor agreement entered into between the contractor and the individual.

Translation Requirements

All three required documents – the wage statement, the FLSA exempt status notification, and the independent contractor notification – must be provided in both English and the language(s) in which significant portions of the workforce is fluent. Where a significant portion of the workforce is not fluent in English, DOL finds that the contractor should provide notices to workers in *each language* in which the significant portion of the workforce is fluent. The agencies do not specify a numeric threshold for what should be considered a "significant portion" of a contractor's workforce.

Electronic Provision of Documents

Contractors may provide all three documents electronically if they regularly provide documents electronically and if the worker can access the document through a computer, device, system, or network provided or made available by the contractor. A contractor is not required to obtain workers' consent to provide notices electronically.

For a copy of the final rule please click on the link provided below.

https://www.federalregister.gov/articles/2016/08/25/2016-19676/federal-acquisition-regulation-fair-pay-and-safe-workplaces

ACA REQUIRES NURSING FACILITIES COLLECT AND SUBMIT STAFFING INFORMATION

Section 6106 of the Affordable Care Act ("ACA") requires nursing facilities to electronically submit direct care staffing information (including agency and contract staff) to the Centers for Medicare & Medicaid Services ("CMS") based on payroll and other auditable data. CMS has developed a system for nursing facilities to submit staffing and census information known as Payroll-Based Journal ("PBJ"). While facilities could begin collecting and submitting staffing and census information on a voluntary basis beginning on October 1, 2015, they are required to collect and submit such data beginning on July 1, 2016. Quarterly reports are due 45 days after the end of each quarter, and the first quarterly report is due on November 14, 2016.

Background

CMS has long identified staffing as one of the essential components of a nursing facility's ability to provide quality care. Section 6106 of the ACA requires nursing facilities to submit direct care staffing information online based on a nursing facility's data. According to CMS, this data, when combined with census information, can then be used to not only report on the level of staff in each nursing home, but also report on employee turnover and tenure, which can impact the quality of care delivered.

In August 2015, CMS published a final report implementing the requirement for nursing homes to submit staffing data. CMS has also published a policy manual, set of FAQs, and several other materials that provide further detail about the staffing and census information required to be reported through the PBJ system. You can view this information

on the CMS website: https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Staffing-Data-Submission-PBJ.html.

Payroll-Based Journal Reporting

Deadlines

Nursing home facilities are required to collect and submit staffing and census information through the PBJ system beginning on July 1, 2016. Staffing and census data will be collected for each fiscal quarter. The fiscal quarters are as follows:

Fiscal Quarter	Date Range
1	October 1 – December 31
2	January 1 – March 31
3	April 1 – June 30
4	July 1 – September 30

Submissions must be received by the end of the 45th calendar day (11:59 pm EST) after the last day in each fiscal quarter in order to be considered timely. The first quarterly report is due on November 14, 2016.

Submission Methods

The PBJ system accepts two primary submission methods: (1) manual data entry; and (2) uploaded data from an automated payroll or time and attendance system (XML format only). In addition, users can use both methods for submitting data, or combinations of those methods.

Registration

Facilities must use the Quality Improvement & Evaluation System (QIES) to submit staffing information through the PBJ system. To connect to PBJ through QIES, facilities must have a CMSnet user ID. Most long-term care facilities will already have connectivity to QIES and CMSNet through submitting minimum data set (MDS) or other CMS data.

Individuals at facilities, vendors (e.g., payroll vendors), and/or corporate staff will need to register to submit data into the PBJ system. This is very similar to the process that has been in place with MDS data for years, and was recently updated to support both electronic plan of correction (ePOC) and hospice data submissions.

Required Data Elements

Nursing home facilities are required to collect and submit basic employee information, staffing hours information, and census information.

Basic employee information includes the following:

Employee ID: All staff (direct employees and contract staff) must be entered in the system by assigning each staff member an Employee ID.

Hire Date: The first date a staff member is employed and is paid for services delivered, either through direct employment or under contract.

Termination date: The last date a staff member is employed and is paid for services delivered, either through direct employment or under contract.

Pay type code: Classification of whether the staff member is a direct employee of the facility (exempt or nonexempt), or employed under contract paid by the facility.

Staffing hours information includes the following:

Work day and date: The day and date associated with the number of hours worked.

Hours: The number of hours each staff member (including agency and contract staff) is paid to deliver services for each day worked.

Job title code: A code identifying the CMS defined job title that matches the role(s) of the staff member for the associated number of hours that the role(s) was/were performed.

Labor category code: A code identifying the CMS defined labor category groupings of associated Job Titles. (Note that this code is not needed for electronic uploads.) You can view Labor and Job Codes and Descriptions in Section 2.3 of the Policy Manual on the CMS website: https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Downloads/PBJ-Policy-Manual-Final-V21.pdf

Census information includes the following:

Month end date: Facilities must enter the resident census for the categories below for the last date of each month.

Medicaid: Number of residents whose primary payer is Medicaid.

Medicare: Number of residents whose primary payer is Medicare.

Other: Number of residents whose primary payer is neither Medicaid nor Medicare.

CMS Enforcement

CMS maintains authority to issue enforcement remedies, such as imposing civil money penalties (CMPs) and withholding Medicare and Medicaid payments from facilities for noncompliance with the Payroll-Based Journal reporting requirements. CMS has stated that as providers are adjusting to this new requirement, it may refrain from imposing enforcement remedies (e.g., for good-faith efforts). Additionally, CMS will provide feedback mechanisms to providers, such as warnings, that will help facilitate compliance with this requirement.

PROPOSED REGULATIONS CLARIFY EMPLOYER TIN SOLICITATION RESPONSIBILITIES

On August 2, 2016, the Internal Revenue Service (IRS) issued proposed regulations entitled “Information Reporting of Catastrophic Health Coverage and Other Issues Under Section 6055” under the Affordable Care Act (ACA). These proposed regulations contain important clarifications relating to, among other things, the responsibilities of Applicable Large Employers (ALEs) and/or insurance providers in soliciting Taxpayer Identification Numbers (TINs).

Background

Internal Revenue Code (IRC) Section 6056 under the Affordable Care Act (ACA) requires ALEs to report to the IRS whether they offer their full-time employees and their employees' qualified dependents the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan. An ALE is an employer that employed (any combination of workers within a controlled group) an average of at least 50 full-time employees (including full-time equivalent employees) during the preceding calendar year.

ALEs that fail to comply with the filing and statement furnishing requirements of Section 6056 may be subject to penalties for failure to file timely a correct information return (Section 6721) or failure to furnish timely a correct statement (Section 6722). The penalty for a failure under either section is currently $260 per statement, and potentially $520 per statement if both sections apply, up to a maximum of $6,357,000 annually. (These amounts are also indexed and may change periodically.)

However, such penalties may be waived if the failure is due to reasonable cause and is not due to willful neglect (i.e., if an ALE can demonstrate that it acted in a responsible manner). The proposed regulations clarify the steps that, if followed by an ALE, will be considered as acting in a responsible manner.

In the context of employment, a TIN denotes the Social Security Number (SSN) of employees. However, self-insured ALEs must report the names and TINs of non-employees, such as spouses and dependents, and in this context, a TIN could include an Individual Taxpayer Identification Number (ITIN) or Adoption Taxpayer Identification Number (ATIN). An ATIN is issued by the IRS as a temporary taxpayer identification number for a child in a domestic adoption where the adopting taxpayers are unable to obtain the child's SSN.

Treatment of Missing TINs

Solicitation of a TIN involves an initial solicitation and two subsequent annual solicitations. Generally, for missing TINs, an initial solicitation must be made when the relationship between the reporting entity and the individual is established. If the reporting entity does not receive the TIN, the first annual solicitation is generally required by December 31 of the year in which the relationship with the taxpayer begins (January 31 of the following year if the relationship begins in December). If the TIN is still not provided, a second annual solicitation is required by December 31 of the following year. Similar rules apply to information reports with incorrect TINs. However, the proposed regulations modify these solicitation rules as they relate to reporting on Forms 1095-C and 1095-B.

Under the proposed regulations, with respect to missing TINs:

- For purposes of ACA reporting, an account is considered “opened” on the date the filer receives a substantially complete application for new coverage or to add an individual to existing coverage.

- Employers and health coverage providers may generally satisfy the requirement for the initial solicitation by requesting enrollees’ TINs as part of the application for coverage.

- The first annual solicitation must be made no later than seventy-five days after the date the filer received an application for coverage, or if the coverage is retroactive, no later than the seventy-fifth day after the determination of retroactive coverage is made.

- The deadline for the second annual solicitation (third solicitation overall) remains December 31 of the year following the year the account is opened.

For individuals already enrolled in coverage before July 29, 2016, the account is considered opened on July 29, 2016. Employers have satisfied the requirement for the initial solicitation

as long as they requested enrollee TINs either as part of the application for coverage, or before July 29, 2016. (In which case the first annual solicitation should be made within a reasonable time after July 29, 2016; making the first annual solicitation within 75 days of the initial solicitation and will be treated as having been made within a reasonable time. The second annual solicitation must be made by December 31, 2017.) Employers that did not ask for TINs before July 29, 2016 should make a first annual solicitation within a reasonable time soon after July 29, 2016. (The second annual solicitation must be made by December 31, 2017.)

The proposed regulations provide that the second annual solicitation relates to failures on returns filed for the year immediately following the year to which the first annual solicitation relates, *and succeeding calendar years*. Thus, once an ALE has completed the initial solicitation of enrollees' TINs; the first annual solicitation (generally within 75 days of the initial solicitation), and the second annual solicitation by December 31 of the year following the initial solicitation, it is not necessary to continue making such requests, as long as filers can demonstrate that they performed the three required solicitations. However, it may be appropriate from a business perspective to continue such requests in order to minimize potential penalty notices.

Treatment of Name and/or TIN Errors

A footnote in the preamble to the proposed regulations clarifies that an error message received from the IRS (i.e., indicating that a TIN and name provided on a Form 1095-C does not match IRS records) does not trigger the requirement to solicit a TIN under the TIN solicitation rules:

> *A filer of the information return required under Section1.6055-1 may receive an error message from the IRS indicating that a TIN and name provided on the return do not match IRS records. An error message is neither a Notice 972CG, Notice of Proposed Civil Penalty, nor a requirement that the filer must solicit a TIN in response to the error message.*

Thus, it appears that an ALE is not required to solicit a corrected TIN or name in response to an error message. However, if an employer receives a Notice 972CG, Notice of Proposed Civil Penalty, from the IRS, it would have to solicit the TIN to fall within the reasonable cause exception. Practically speaking, employers should, at a minimum, check their files carefully to determine whether the related names and TINs reported matched those provided by the employee (i.e., on the application for coverage, the employee's Form W-4, etc.). It may also be appropriate to ask the employee to double-check the accuracy of any names and TINs provided to the employer.

TIN Solicitations Made to "Responsible Individuals" Are Deemed to Include All Covered Individuals

For purposes of the penalties under Section 6722, the furnishing of a statement to the responsible individual (e.g., the employee) is treated as the furnishing of a statement to a covered individual (e.g., the spouse and/or dependent(s) of the employee). The proposed regulations provide that TIN solicitations (both initial and annual) made to the responsible individual are treated as TIN solicitations of every covered individual on the health care policy or plan. The filer does not need to make separate solicitations from the responsible individual for each covered individual, nor does it need to separately solicit the TINs of each covered individual by contacting each covered individual directly.

The one exception is for individuals added to a policy after the TIN solicitations. When a new individual is added to a policy, the individual is new to the filer and it is the filer's responsibility to solicit that individual's TIN.

Annual solicitations must include a return envelope. However, filers may request more than one TIN at the same time and do not need to send separate envelopes with each request. For example, on a renewal application requesting the TINs for all covered individuals, filers need only provide one return envelope for that application or request.

IRS Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs (including instructions for reading CD/DVDs), provides that filers may establish an electronic system for payees (including covered individuals) to receive and respond to TIN solicitations, provided certain listed requirements are met.

DOL RELEASES FAQS ON NEW OVERTIME REGULATIONS

As previously announced, the United States Department of Labor (DOL) on May 18, 2016 released final regulations, published in the Federal Register on May 23, 2016, that modifies certain provisions of the Fair Labor Standards Act (FLSA). Specifically, the final regulations increase the minimum salary required to be earned by an employee in order for that employee to be exempt from the FLSA overtime requirements from $455 per week ($23,660 per year) to $913 per week ($47,476 per year) for a full-time worker. In addition, the FLSA was modified to allow up to 10% of minimum salary level can come from non-discretionary bonuses, incentive payments, and commissions, paid at least quarterly. **The effective date of the changes to the FLSA overtime rules is December 1, 2016.**

For more information on the revised overtime regulations, please see the May 2016 Tech Flex at the link below in the article titled “DOL Releases Final Modifications to FLSA Overtime Rules.”

https://viproom.adp.com/home/clients/fsa_cobra/tf/Tech_Flex_Newsletter_May_2016.pdf

Subsequent to the release of the final regulations the DOL held a number of webinars to address concerns regarding the new overtime rules. From these sessions, the DOL has created 115 frequently asked questions (FAQs) designed to provide more clarity to the upcoming December 1 effective changes.

A sampling of these FAQs are as follows:

Q. With regard to the non-discretionary bonus and catch up payment provisions, does “quarterly” mean calendar quarter? Fiscal quarter? Or is it up to the employer’s discretion?

A. No, it does not mean the calendar quarter. It is the employer's discretion when the quarter will begin.

Q. Are employers in compliance if they follow the annualized amounts? (Or do they have to make sure they are always in compliance each week?)

A. An employee's exempt status - and, if nonexempt, the employee's right to overtime pay - is determined on a weekly basis. Generally, to retain exempt status, an employee must satisfy the duties test and earn at least $913 per we

Q. What is the salary requirement for part time salary workers?

A. Whether a worker is full-time or part-time, the standard salary level to qualify for exemption will be $913 per week.

Q. How will this new rule affect California? California has always been consistent or more favorable to the employee than FLSA. This new rules suggests FLSA is now more favorable to the employee. Or am I missing something? Thanks

A. The Fair Labor Standards (FLSA) provides minimum wage and hour standards, and does not prevent a State from establishing more protective standards. If a State establishes a more protective standard than the provisions of the FLSA, the higher standard applies in that State. To the extent the new minimum salary amount of $913 per week under the Overtime final rule is higher than the State requirement, the employer in that State must comply with the higher standard and pay not less than $913 per week for an exempt white collar employee.

Q. Do you plan to provide written guidance with further details regarding the application of the 10% "credit"?

A. Yes, we plan to issue additional guidance before the Final Rule becomes effective on December 1, 2016.

Q. I have an employee that works 50 hours a week on exempt status. He will be moved back to hourly, and will get a pay reduction. This will help us to maintain his current weekly wage. Is this something that we can do and be in compliance with FLSA.

A. Employers have a range of options for responding to the updated standard salary level. For each affected employee newly entitled to overtime pay, employers may:

- increase the salary of an employee who meets the duties test to at least the new salary level to retain his or her exempt status;
- pay an overtime premium of one and a half times the employee's regular rate of pay for any overtime hours worked;
- reduce or eliminate overtime hours;
- reduce the amount of pay allocated to base salary (provided that the employee still earns at least the applicable hourly minimum wage) and add pay to account for overtime for hours worked over 40 in the workweek, to hold total weekly pay constant;
- or use some combination of these responses.

The circumstances of each affected employee will likely impact how employers respond to this Final Rule.

Q. Is the amount/week calculated before or after taxes?

A. Thanks for your question. The Department looks at an employee's gross wage amount before taxes.

Q. Do all employees of a company have to be on the same quarter for purposes of the “true-up” payment, or can each employee be on an individual quarter based on start date?

A. No, employees do not have to be on the same quarter.

> "For purposes of computing pay due under the Fair Labor Standards Act, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees." 29 CFR 778.105. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. The same principle applies to the treatment of nondiscretionary bonuses and incentive payments (including commissions), which, beginning on Dec. 1, 2016, may satisfy up to 10 percent of the new standard salary level, provided that such payments are paid on a quarterly or more frequent basis. For each employee, the beginning of the quarterly period is left to the employer's discretion. 29 CFR 541.602(a)(3) as well as 81 Federal Register 32427 provides more information regarding the treatment of catch-up payments for nondiscretionary bonuses.

For a copy the DOL FAQs please click on the link provided below:

https://www.dol.gov/whd/overtime/final2016/webinarfaq.htm

CALIFORNIA CONFIRMS RETIREES ENTITLED TO PROMPT PAYMENT OF FINAL WAGES

In a recent decision, the Supreme Court of California confirmed that employees who retire are entitled to the prompt payment of final wages, the same as if the retired employee had quit his or her job. The employer in this case had argued that the prompt payment requirement did not apply because the employee retired, and had not "quit" and was not "discharged."

By way of background, the California Labor Code imposes certain prompt timing requirements on the payment of final wages to employees who are discharged or who quit. If an employer discharges an employee, the employee's final wages are "due and payable immediately." If an employee quits, his or her final wages are due within 72 hours, unless the employee has given 72 hours' notice, in which case the employee is entitled to his or her wages on the last day of employment. Employers that fail to pay final wages within these timeframes are subject to penalties, commonly referred to as "waiting time penalties," of up to 30 days wages.

The plaintiff in *McLean v. State of California* was an employee of the California Department of Justice who retired in November 2010. She alleged that the State of California had failed to pay her final wages on her last day of employment, or within 72 hours as required by the California Labor Code. She also purported to bring a class action on behalf of other employees similarly situated. Although the trial court found in the employer's favor, the appellate court reversed and found in favor of the employee, holding that the prompt payment requirements do apply where an employee "quits to retire."

The California Supreme Court upheld the decision of the Court of Appeal. While acknowledging that the Labor Code does not expressly define "quit," the court found that the ordinary meaning of the word was broad enough to encompass a voluntary departure from a particular employment, whatever its motivation, *i.e.*, an employee who retires, one who ends one job to start another, or leaves employment for any other reason. Therefore, it held, that Court of Appeal correctly concluded that the prompt payment and waiting time penalty provisions of the Labor Code apply to persons who retire from their employment, just as they apply to those who voluntarily leave their employment for other reasons.

For a copy of the California Supreme Court's opinion, click here:

http://law.justia.com/cases/california/supreme-court/2016/s221554.html

CALIFORNIA ENACTS LAW AFFECTING OVERTIME PAY FOR AGRICULTURAL EMPLOYEES

On Monday, September 12, 2016, Governor Jerry Brown signed a law that will phase in a 40-hour workweek for agricultural employees over a period of four years. The stated purpose of the law is to "provide any person employed in an agricultural occupation in California, as defined in Order No. 14-2001 of the Industrial Welfare Commission (revised 07-2014) with an opportunity to earn overtime compensation under the same standards as millions of other Californians." The measure, called the Phase-In Overtime for Agricultural Workers Act of 2016, will not begin to take effect until 2019.

In 2019, the current agricultural overtime thresholds of 10 hours per day and 60 hours per week will begin to decrease by half-hour increments over each of four years. Thus, in 2022 agricultural workers will be subject to the same 8-hour maximum day applied to other employees. To placate smaller employers, the measure will not begin to apply to employers with 25 or fewer employees until three years after the effective dates of the primary portion of the measure. Specific dates applicable to the new law are as follows:

For employers with more than 25 employees:

- On January 1, 2019, employers with more than 25 employees may not employ agricultural workers for more than nine and one-half hours in any workday or work in excess of 55 hours in any workweek, unless the employees are paid one and one-half times their regular rate of pay for all hours worked over nine and one-half hours in a workday or 55 hours in a workweek.
- On January 1, 2020, overtime thresholds for agricultural employees will decrease to nine hours per workday, and 50 hours per workweek.
- On January 1, 2021, overtime thresholds for agricultural employees will decrease to eight and a half hours per workday, and 45 hours per workweek.
- Beginning January 1, 2022, overtime thresholds for agricultural employees will decrease to eight hours per workday, and 45 hours per workweek.
- Also on January 1, 2022, agricultural employees who work more than 12 hours in one day must be compensated at a rate no less than twice the employee's regular rate of pay.

For employers with 25 or fewer employees:

- On January 1, 2022, employers with 25 or fewer employees may not employ agricultural workers for more than nine and one-half hours in any workday or work in excess of 55 hours in any workweek, unless the employees are paid one and one-half times their regular rate of pay for all hours worked over nine and one-half hours in a workday or 55 hours in a workweek.
- On January 1, 2023, overtime thresholds for agricultural employees will decrease to nine hours per workday, and 50 hours per workweek.
- On January 1, 2024, overtime thresholds for agricultural employees will decrease to eight and a half hours per workday, and 45 hours per workweek.
- On January 1, 2025, overtime thresholds for agricultural employees will decrease to eight hours per workday, and 45 hours per workweek.
- On January 1, 2025, agricultural employees who work more than 12 hours in one day must be compensated at a rate no less than twice the employee's regular rate of pay.

EITC NOTIFICATION RULES MODIFIED IN CALIFORNIA

On September 12, 2016, Governor Jerry Brown signed into law AB 1847 titled the California Earned Income Tax Credit Information Act (Act). **The Act requires employers currently required to notify employees who may be eligible for the federal earned income tax credit (EITC) to also notify these employees that they may be eligible for the California Earned Income Tax Credit. The Act is effective for EITC notices furnished on or after January 1, 2017.**

The federal EITC is a refundable tax credit for low- to moderate-income working individuals and couples, particularly those with children. The amount of EITC benefit depends on a recipient's income and number of children. For a person or couple to claim one or more persons as their qualifying child, requirements such as relationship, age, and shared residency must be met.

Under federal law, employers must notify each employee who worked for the employer at any time during the year and from whose wages the employer did not withhold income tax of the availability of EITC. However, employers do not have to notify any employee who claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.

Employers must provide EITC notification as required by the following means:

- The Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, which has the required information about the EITC on the back of Copy B.
- A substitute Form W-2 with the same EITC information on the back of the employee's copy that is on Copy B of the IRS Form W-2.
- Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC).
- An employer written statement with the same wording as Notice 797.

AB 1847 requires the notice furnished to employees regarding the availability of the federal and the California EITC must state as follows:

BASED ON YOUR ANNUAL EARNINGS, YOU MAY BE ELIGIBLE TO RECEIVE THE EARNED INCOME TAX CREDIT FROM THE FEDERAL GOVERNMENT (FEDERAL EITC). THE FEDERAL EITC IS A REFUNDABLE FEDERAL INCOME TAX CREDIT FOR LOW-INCOME WORKING INDIVIDUALS AND FAMILIES. THE FEDERAL EITC HAS NO EFFECT ON CERTAIN WELFARE BENEFITS. IN MOST CASES, FEDERAL EITC PAYMENTS WILL NOT BE USED TO DETERMINE ELIGIBILITY FOR MEDICAID, SUPPLEMENTAL SECURITY INCOME, FOOD STAMPS, LOW-INCOME HOUSING, OR MOST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PAYMENTS. EVEN IF YOU DO NOT OWE FEDERAL TAXES, YOU MUST FILE A FEDERAL TAX RETURN TO RECEIVE THE FEDERAL EITC. BE SURE TO FILL OUT THE FEDERAL EITC FORM IN THE FEDERAL INCOME TAX RETURN BOOKLET. FOR INFORMATION REGARDING YOUR ELIGIBILITY TO RECEIVE THE FEDERAL EITC, INCLUDING INFORMATION ON HOW TO OBTAIN THE IRS NOTICE 797 OR ANY OTHER NECESSARY FORMS AND INSTRUCTIONS, CONTACT THE INTERNAL REVENUE SERVICE BY CALLING 1-800-829-3676 OR THROUGH ITS WEB SITE AT WWW.IRS.GOV.

YOU ALSO MAY BE ELIGIBLE TO RECEIVE THE CALIFORNIA EARNED INCOME TAX CREDIT (CALIFORNIA EITC) STARTING WITH THE CALENDAR YEAR 2015 TAX YEAR. THE CALIFORNIA EITC IS A REFUNDABLE STATE INCOME TAX CREDIT FOR LOW-INCOME WORKING INDIVIDUALS AND FAMILIES. THE CALIFORNIA EITC IS TREATED IN THE SAME MANNER AS THE FEDERAL EITC AND GENERALLY WILL NOT BE USED TO DETERMINE ELIGIBILITY FOR WELFARE BENEFITS UNDER

CALIFORNIA LAW. TO CLAIM THE CALIFORNIA EITC, EVEN IF YOU DO NOT OWE CALIFORNIA TAXES, YOU MUST FILE A CALIFORNIA INCOME TAX RETURN AND COMPLETE AND ATTACH THE CALIFORNIA EITC FORM (FTB 3514). FOR INFORMATION ON THE AVAILABILITY OF THE CREDIT, ELIGIBILITY REQUIREMENTS, AND HOW TO OBTAIN THE NECESSARY CALIFORNIA FORMS AND GET HELP FILING, CONTACT THE FRANCHISE TAX BOARD AT 1-800-852-5711 OR THROUGH ITS WEB SITE AT WWW.FTB.CA.GOV.

For a copy of the Act please click on the link provided below:

http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1801-1850/ab_1847_bill_20160912_chaptered.pdf

NEW JERSEY MOVES TO END RECIPROCITY AGREEMENT WITH PENNSYLVANIA

New Jersey Governor Chris Christie has announced his intention to end a pact between his state and Pennsylvania that had been in effect for nearly four decades. He signed an Executive Order on September 2, 2016 that will result in New Jersey's withdrawal from the agreement. Termination of the agreement does not require action or approval by the legislature. Unless the Governor changes his mind, the change will be effective on January 1, 2017.

Currently, the agreement between the states allows employees to pay taxes based upon where they live, instead of where they work. Thus, employees who work in one state but live in another need only file income tax returns in the state where they live. Once the reciprocity agreement ends, such individuals will need to file income tax returns in both states. They could then claim a credit against taxes owed where they live, based on taxes paid in the state where they work.

Governor Christie estimates that the move will result in approximately $180 million in revenue to New Jersey. He claims the move is necessitated by budget shortfalls in his state. It is estimated that more than 100,000 New Jersey employees live in Pennsylvania, and vice versa. The expected revenue increase will be likely be the result of higher taxes generated from high income individuals who live in Pennsylvania, but work in New Jersey. This is because Pennsylvania has a flat income tax rate of 3.07 percent, but New Jersey has a progressive income tax scheme with six income-tax brackets, the highest of which currently is 8.97%.

BERKELEY CALIFORNIA ADOPTS MINIMUM WAGE ORDINANCE

On August 29, 2016, the City of Berkeley, California adopted the "Minimum Wage Ordinance" (Ordinance) that increases the minimum wage as shown below that "Employers" must pay for each hour worked by an "Employee" within the geographic boundaries of the "City."

Date	Minimum Hourly Wage
October 1, 2016	$12.53
October 1, 2017	$13.75
October 1, 2018	$15.00

In addition, beginning on July 1, 2019, and thereafter on the 1st of July of each year, the minimum wage will be increased by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area.

Under the Ordinance, “Employer”, “Employee” and “City” are defined as follows:

"Employer" shall mean any Person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title 9 of the Berkeley Municipal Code.”

"Employee" shall mean any person who:

1. In a calendar week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; and

2. Qualifies as an Employee entitled to payment of a minimum wage from any Employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to- Work Program.

"City" shall mean the City of Berkeley.

For a copy of the “Minimum Wage Ordinance” please click on the link provided below:

http://webcache.googleusercontent.com/search?q=cache:jyTtBM5S7-8J:www.ci.berkeley.ca.us/Clerk/City_Council/2016/08_Aug/Documents/2016-08-31_Item_01_Ordinance_7505.aspx+&cd=1&hl=en&ct=clnk&gl=us

SAN MATEO CITY COUNCIL PASSES MINIMUM WAGE ORDINANCE

On August 15, 2016, the San Mateo, California City Council passed an ordinance that increases the minimum wage. Under the ordinance, employers must pay employees the rates below for each hour worked within the boundaries of San Mateo as follows:

For Employers which are not Non-Profit Corporations, the minimum wage will be as follows:

- Beginning January 1, 2017, $12.00 per hour.
- Beginning January 1, 2018, $13.50 per hour.
- Beginning January 1, 2019, $15.00 per hour.

For Employers which are Non-Profit Corporations, the minimum wage will be as follows:

- Beginning January 1, 2017, $10.50 per hour.
- Beginning January 1, 2018, $12.00 per hour.
- Beginning January 1, 2019, $13.50 per hour.
- Beginning January 1, 2020, the minimum wage will be equal to that of the employers which are not Non-Profit Corporations, and be subject to the Consumer Price Index increase as described below.

Beginning on January 1, 2020, and each January thereafter, the minimum wage shall increase by an amount equal to the prior year's increase, if any, in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose as determined by the United States Department of Labor. The change shall be calculated by using the August to August change in the CPI to calculate the annual increase, if any. A decrease in the CPI shall not result in a decrease in the minimum wage.

An employee who is a Learner, defined as employees of any age during their first 160 hours of employment working in occupations in which they have no previous similar or related experience shall be paid no less than 85 percent of the applicable Minimum Wage for the first 160 day of employment.
It is important to note that an employee under the ordinance means any person who:

- In a calendar week performs at least two hours of work within the geographic boundaries of the City for an Employer; and

- Qualifies as an employee entitled to payment of a minimum wage from any Employer under the California Minimum Wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the State of California Industrial Welfare Commission. Employees shall include Learners, as defined by the California Industrial Welfare Commission.

OCTOBER 1, 2016 MINIMUM WAGE INCREASE REMINDER

The following are a list of Cities, Counties and states where the minimum wage will increase as of October 1, 2016.

Jurisdiction	**October 1, 2016 Minimum Wage**
Prince George's County, Maryland	$10.75 per hour
Berkeley, California	$12.53 per hour

FOUR STATES TO VOTE ON MINIMUM WAGE INCREASES

On November 8, 2016, Arizona, Colorado, Maine and Washington will vote on ballot initiatives to determine whether or not to increase the minimum wage.

Arizona:

If passed, the "Fair Wages and Healthy Families Act" (Proposition 206) would increase the minimum wage rate from $8.05 per hour to:

(1) $10.00 per hour, effective Jan. 1, 2017;

(2) $10.50 per hour effective, Jan. 1, 2018;

(3) $11.00 per hour effective Jan. 1, 2019; and

(4) $12.00 per hour, effective Jan. 1, 2020.

Employers would still be able to pay tipped employees $3.00 less per hour, if combined wages plus tips are not less than the minimum wage rate.

Colorado:

Voters will decide on whether to pass Colorado Proposed Initiative #101 that proposes to increase the minimum wage rate from $8.31 per hour to $9.30 per hour, effective Jan. 1, 2017. The minimum wage rate would annually increase by 90¢ after that until it reaches $12.00 per hour, effective Jan. 1, 2020. The tip credit would remain at $3.02 per hour.

Maine:

Voters in Maine will decide whether or not to pass ballot measure that is successful would increase the minimum wage rate from $7.50 per hour to $9.00 per hour in 2017, with annual $1 increases until the minimum wage rate reaches $12.00 per hour in 2020. The minimum wage rate for tipped workers would increase from $3.75 per hour to $5.00 per hour in 2017, and then by $1.00 per hour each year until it matches the minimum wage rate for all other workers, with a deadline of 2024 to match the regular minimum wage rate.

Washington:

Washington State voters will vote on Initiative Measure 1433 (Measure) regarding the state minimum wage. The current minimum wage is $9.47 per hour. The state does not allow a tip credit and the cash wage minimum for tipped employees is $9.47 per hour.

If passed, the Measure would increase the state hourly minimum wage for employees who are at least 18 to $11.00 in 2017, $11.50 in 2018, $12.00 in 2019, and $13.50 in 2020.

For a copy of the Measure please click on the link provided below:

http://sos.wa.gov/_assets/elections/initiatives/FinalText_954.pdf

ILLINOIS WAGE ASSIGNMENT LAWS AMENDED

On August 26, 2016, Illinois Governor Bruce Rauner signed into law Senate Bill 2804 (SB 2804) that amends the Illinois Wage Assignment Act effective January 1, 2017. Illinois requires certain written procedures must be followed when a portion of an employee's wages is assigned to a creditor. In addition, a demand on an employer for the wages of the employee via a wage assignment may not be served on the employer unless: (1) There has been a default of more than 40 days in payment of indebtedness secured by the wage assignment and the default has continued to the date of the demand and (2) the demand contains a correct statement as to the amount the employee is in default and the original or copy of the assignment is provided to the employer.

SB 2804 provided the following changes:

- Permits a creditor to serve its demand for wages on an employer via first class, registered, or certified mail;
- Clarifies that if the wage assignment is revocable under federal law, it is only valid until the employee revokes it;
- Amends the "Notice of Intent to Assign Wages" form to include additional information about the revocability of assignments, where applicable; and
- Provide procedures the employee must follow to revoke an assignment.
- The employer must commence payments to a creditor not sooner than five days after it receives notice of a demand if it has not received a revocation. If the employer receives a notice of revocation from the employee, it must stop any deductions in place for that wage assignment unless the employer receives a copy of a subsequent written agreement between the employee and creditor that reauthorizes the assignment.

MINNEAPOLIS MINIMUM WAGE BALLOT MEASURE HALTED

On August 31, 2016, the Supreme Court of Minnesota stopped an effort to have a minimum wage proposal appear on Minneapolis voters November 2016 ballots ruling that the Minneapolis city council was within its rights to keep the minimum wage measure off the ballot. The decision reversed an August 22nd ruling by the Hennepin County District Court approving the ballot issue. The city filed an appeal to challenge the decision and suspend the requirement to include the minimum wage proposal on the ballot while the appeal was ongoing.

In a unanimous order released a day after it heard the case, the Court sided with the city of Minneapolis, which had argued that a proposal to raise the wage was not a proper subject for an amendment to the city's charter.

The proposed charter amendment, which would increase the city's minimum wage to $15 for all employers by August 2022, received the required number of signatures needed to appear on the ballot.

Minnesota's hourly minimum wages are $9.50 for employers with annual gross revenue of at least $500,000 and $7.75 for all other employers.

Under the proposal, the minimum wage would have increased Aug. 1, 2017, to $10 for all employers. The hourly minimum wage applicable to employers with at least 500 employees would increase annually to reach $15 effective August 1, 2020. The minimum rate for smaller employers would have increased each year at a slower pace, reaching $15 effective August 1, 2022.

NEW JERSEY GOVERNOR VETOES STATE MINIMUM WAGE INCREASE

On August 30, 2016, New Jersey Chris Christie vetoed Assembly Bill 15 that if enacted would have raised the state minimum wage to $15.00 per hour by 2021. Three years ago, New Jersey residents voted to increase the state minimum wage to $8.25 per hour which included annual adjustments based on the cost of living (Consumer Price Index or CPI). Assembly Bill 15 would have made New Jersey only the third state to adopt a $15 minimum wage rate. In his veto message, Christie stated in part the following:

> Despite having a constitutional mandate in place, the legislature now wants to increase the minimum wage by almost 80 percent just three years later. While this bill's proposed increase surely is responsive to demands from Democrat legislators' political patrons, it fails to consider the capacity of businesses, especially small businesses, to absorb the substantially increased labor costs it will impose, killing jobs and erasing gains of more than 275,000 private sector jobs since 2010. I cannot support a bill that undermines the positive results we have achieved in New Jersey and I am returning A-15 to the legislature with an Absolute Veto.

The minimum wage in New Jersey is currently $8.38 per hour. Assembly Bill 15 provided for increases to $10.10 per hour on January 1 with annual increase of $1.25 or $1 plus any increases in the CPI applicable to that year, to reach $15 by 2021, with annual increases based on the cost of living after that.

For a copy of the Christie press release regarding the veto of minimum wage increase bill, please click on the link provided below.

http://www.state.nj.us/governor/news/news/552016/approved/20160830a.html.

NEW YORK STATE DOL RELEASES NEW WAGE PAYMENT REGULATIONS

On September 7, 2016, the New York State Department of Labor published new regulations related to payment of wages, including rules affecting payment via direct deposit and paycards. Under the new rules, which go into effect on March 7, 2017, employees must receive certain notifications in English and their primary language before being paid by direct deposit or through a paycard. They must be informed (1) about all their payment options; (2) that they are not required to accept wages by payroll debit card or by direct deposit; and (3) that they may not be charged any fees for services that are necessary to access wages.

In addition, employees must consent in writing to be paid through any method other than check or cash. Consent may be withdrawn at any time, but the employer will have up to two pay periods to finalize any requested change. The earlier, proposed regulation would have required employers to go through a time-consuming and cumbersome process of re-obtaining consents from all employees who previously had consented to be paid via direct

deposit or paycard, but after reviewing public comments opposing this, the Department relented. Instead, under the new regulations, prior consents given without the requisite notices will remain valid so long as such notices are provided to employees before the effective date (March 7, 2017), and provided that employees are expressly notified of their right to withdraw consent to direct deposit or payroll debit card through such notices.

The Department plans to prepare templates that contain all of the information necessary for compliance with the notification and consent requirements. Employers are not required to use these templates, but may do so if they choose.

For employees who elect to be paid via direct deposit, employers must maintain a copy of the employee's consent during the period of the employee's employment and for six years following the last payment of wages by direct deposit. In addition, a copy of the employee's written consent must be provided to the employee.

Additional requirements apply to payment of wages via paycard. If employees are offered the option of being paid by paycard, the notification provided by the employer must provide, in addition to the information listed in the first paragraph, a list of locations where employees can access and withdraw wages at no charge to them within reasonable proximity to their residence or place of work. If employees do consent to be paid via paycard, there is a seven-day waiting period during which the consent is not effective. Once the consent is effective, employees paid with paycards must be provided with local access to one or more automated teller machines offering withdrawals at no cost to the employee, as well as at least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the paycard without incurring a fee. Other provisions prohibit employers from charging or passing on any fees associated with paycards. Further, employees who are covered by a collective bargaining agreement with a union may not be paid via paycard without the consent of the union.

PENNSYLVANIA AMENDS CHILD SUPPORT ADMINISTRATIVE FEE

Effective August 30, 2016, as the result of the enactment of S.B. 936, now Act 64, the administrative fee that an employer may withhold from an employee's income for processing a child support order issued against that employee is a one-time fee of $50.00. Under prior law, employers were allowed to withhold 2% of the amount deducted under the order each time.

According to the American Payroll Association September 12, 2016 Pay-State Update, this change raised a number of questions for employers and payroll professionals. In response, the Pennsylvania Bureau of Child Support (BCES) provided the federal Office of Child Support Enforcement (OCSE) with a number of Frequently Asked Questions (FAQs) as follows to clarify the change.

> Question 1: Can employers assess the fee on subsequent orders?
>
> Answer: The one-time $50 fee applies to each employee, not each order. Therefore, employers may only collect up to $50 in administrative fees for the duration of the individuals' employment, regardless of the number of income attachments received for the employee.
>
> Question 2: How should employers handles employees who left employment and were subsequently rehired? When can the fee be reassessed?
>
> Answer: The $50 one-time fee limitation applies for the duration of the individuals' employment. Seasonal, transient, and other typically low-income employees will be adversely impacted by Act 64 if each subsequent rehire with

the same company is regarded as a new eligibility period for the $50 one-time fee. Therefore, rehired individuals are only eligible for a new $50 fee when their start date is more than one year from their previous leave date.

Question 3: What should employers do if they are unable to update their payroll systems prior to August 30, 2016 effective date?

Answer: Employers may withhold the one-time $50 fee at any time during the income-attached employee's tenure with the company. Employers that are unable to update their payroll systems before August 30, 2016, may elect to withhold the fee after their system updates are complete. Employers may not continue to withhold a percentage fee until they are able to take the $50 one-time fee.

APA Observation:

According to the FAQs, it appears that the employer can deduct the $50 fee only once for a particular employee. If an employer receives a subsequent child support order for the same employee for other children, no administrative fee will be allowed for those orders.

In addition, the APA Government Relations Task Force on Child Support and Other Garnishments asked BCES two more questions as follows.

APA Question #1: If there is are not enough funds to take the entire fee in one pay period, can it be pro-rated and taken over multiple period?

BCES Answer: Yes, the employer may deduct the fee over multiple periods if there are insufficient funds to deduct it in a single period.

APA Question #2: Is Pennsylvania making any changes regarding the conflict with the Social Security Act section that allows employers to deduct the fee, even if it reduces the child support amount?

BCES Answer: We are reviewing this internally and do not have a response at this time. Any potential change would require legislative action.

Finally, the APA noted that employers with additional questions may call 877-676-9580 and are also encouraged to register online at www.childsupport.state.pa.us to receive important updates via email.

For a copy of S.B. 936 (Act 64) please paste the following into your browser.

http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2015&sessInd=0&billBody=S&billTyp=B&billNbr=0936&pn=1148

UNCLAIMED WAGE REQUIREMENTS CHANGED IN PENNSYLVANIA

Pennsylvania has enacted legislation, amending the Pennsylvania Unclaimed Property Act (Act) that now requires employers to notify employees with unclaimed wages prior to sending the unclaimed wages to the state. While all states have unclaimed property laws, Pennsylvania and Delaware historically were the only states that did not require notification to be given to property owners prior to the transfer of unclaimed property to the state.

The new amendments to the Act require the holder of property presumed abandoned to send notice to the owner of the property not more than 120 days, nor less 60 days, prior to the date a report concerning the property is required to be submitted to the State Treasurer, stating that the holder is in possession of the property, if:

- the holder has in its records an address for the owner that the holder's records do not disclose to be inaccurate; and
- the value of the property is $50 or more.

The written notice must be sent via first class mail, unless the employee has previously agreed to a method of electronic notice that is currently valid, and provide the following information:

- a description of the property;
- a description of the property's ownership;
- the value of the property, if known; and
- any information necessary to contact the holder to prevent the reporting of the property to the State Treasurer.

Pennsylvania law requires unclaimed property reports to be submitted on or before April 15 of the year following the year in which the property was first presumed abandoned, but allows the State Treasurer to grant requests to delay the due date for the submission of reports for up to six months. As a result, unless a holder is authorized to delay the filing of an unclaimed property report, notices for property to be transferred to the State Treasurer in 2017 must be sent between December 21, 2016 and February 13, 2017.

Holders of unclaimed property are prohibited from imposing any costs or fees upon owners of unclaimed property for the preparation or mailing of these notices.

These changes to the Act took effect on September 10, 2016, and will apply to unclaimed property reports filed in 2017.

ARIZONA TO VOTE ON PAID SICK LEAVE

Arizona voters will decide on November 8, 2016, whether to approve the "Fair Wages and Healthy Families Act" (Prop 206) which would provide earned paid sick time to employees. Under Prop 206, Employees would accrue a minimum of one hour of earned paid sick time for every 30 hours worked. Employers with 15 or more employees would be allowed to cap earned paid sick time at 40 hours per year. Employers with fewer than 15 employees would be allowed to cap earned paid sick time at 24 hours per year.

Prop 206 would allow paid sick leave to be used for the following purposes:

- Employee mental or physical illness.
- Care of a family member.
- A public health emergency.
- Absence due to domestic violence, sexual violence, abuse or stalking.

ALBUQUERQUE SICK LEAVE MEASURE ON NOT NOVEMBER BALLOT

The Albuquerque, New Mexico City Council had sent a sick leave ballot initiative to Bernalillo County officials with a request that it go to voters on November 8, 2016. **On September 7, 2016, the Board of County Commissioners rejected the placement of a paid sick leave ordinance on the November ballot. Consequently, the measure will NOT be put to a vote this coming election day.**

The "Albuquerque Healthy Workforce Ordinance" proposal if passed by the voters would have required businesses with 40 or fewer employees to provide workers with 40 hours of paid sick leave each year. Businesses with more than 40 employees would have been required to provide workers 56 hours of paid sick leave each year.

Other highlights of the proposal included the following:

- Employees could use paid sick leave for an employee or employee's family member's mental or physical illness, injury or health condition; including medical diagnosis, care, treatment, or recovery; for preventive medical care; for closure of the employee's place of business or family member's school or place of care for public health reasons; or for absence necessary due to domestic violence, sexual assault or stalking suffered by the employee or employee's family member, provided the leave is to obtain medical or psychological treatment, relocate, prepare for or participate in legal proceedings, or obtain related services.

- Employees will accrue a minimum of one hour of paid sick time for every 30 hours worked. Employees of large employers cannot use more than 56 hours of paid sick time in a year, and employees of small employers cannot use more than 40 hours of paid sick time in a year, unless the employer's policy provides for a higher limit.

- Paid sick time will begin to accrue on the first day of employment. Employees will be entitled to use accrued paid sick time beginning on the 90th calendar day following the first day of employment or the effective date of the law, whichever is later, unless the employer's policy provides that employees may use accrued time earlier.

- Employees exempt from overtime requirements under federal and state law will be assumed to work no more than 40 hours in each work week for purposes of paid sick time accrual.

- Paid sick time is to be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee.

- An employer may require reasonable documentation that paid sick time has been used for a covered purpose only if the employee uses 3 or more consecutive paid sick days.

- Measure takes effect 90 days following the date of enactment or on the date of termination of any collective bargaining agreement.

BERKELEY ENACTS PAID SICK TIME ORDINANCE

The city of Berkeley, California has enacted an ordinance that will provide paid sick time to employees. Under the ordinance, employees who have accrued paid sick leave under current California law, prior to October 1, 2017, will continue to accrue and use paid sick leave consistent with current California law.

Employees who have not accrued paid sick leave under current California law by October 1, 2017, and who work at least two hours in a calendar week for an employer in the city limits of Berkeley, will begin to accrue one hour of paid sick leave on October 1, 2017, for every 30 hours worked. Employers with fewer than 25 employees in a given week may cap paid sick leave at 48 hours per calendar or fiscal year. Employers with 25 or more employees may cap paid sick leave at 72 hours.

Other highlights of the Berkeley paid sick time ordinance are as follows:

- **"Employer"** shall mean any Person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title 9 of the Berkeley Municipal Code."

- **"Employee"** shall mean any person who:

- In a calendar week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; and

- Qualifies as an Employee entitled to payment of a minimum wage from any Employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to- Work Program.

- **"City"** shall mean the City of Berkeley

- An Employer is not required to provide financial or other reimbursement to an Employee upon the Employee's termination, resignation, retirement, or other separation from employment, for accrued Paid Sick Leave that the Employee has not used.

- The rate of pay shall be the Employee's hourly wage. If the Employee in the 90 days of employment before taking accrued sick leave had different hourly pay rates, was paid by commission or piece rate, or was a nonexempt salaried Employee, then the rate of pay shall be calculated by dividing the Employee's total wages, not including overtime premium pay, by the Employee's total hours worked in the full pay periods of the prior 90 days of employment.

- An Employee may begin using Paid Sick Leave 90 calendar days after commencement of employment.

- An Employee may use Paid Sick Leave not only when he or she is ill or injured or for the purpose of the Employee's receiving medical care, treatment, or diagnosis but also to aid or care for the following persons when they are ill or injured or receiving medical care, treatment, or diagnosis: child, parent, legal guardian or ward, sibling, grandparent, grandchild, and spouse, registered domestic partner under any state or local law, or designated person. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis.

- If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked 30 hours after paid sick leave begins to accrue. There shall be a window of 10 work days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a window of 10 work days for the employee to make the designation.

- Every Employer shall post in a conspicuous place at any workplace or job site in the City where any Employee works, the notice published each year by the City informing Employees of their Paid Sick Leave rights.

- Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place or job site.

- In instances where an Employee does not have a regular physical location where they perform their work, the Employer shall provide a copy of the Paid Sick Leave public notice to the Employee when they are hired or assigned to complete work within the City of Berkeley.

- Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements.

- **Employers must include the number of hours of Paid Sick Leave accrued to date in such records that they provide to Employees at the end of each pay period.**

For a copy of the Paid Sick Leave ordinance, please click on the link provided below and see “Paid Sick Leave.”

http://webcache.googleusercontent.com/search?q=cache:jyTtBM5S7-8J:www.ci.berkeley.ca.us/Clerk/City_Council/2016/08_Aug/Documents/2016-08-31_Item_01_Ordinance_7505.aspx+&cd=1&hl=en&ct=clnk&gl=us

ILLINOIS PAID SICK LEAVE ACT ENACTED

On August 19, 2016, Illinois Governor Bruce Rauner signed into law The Employee Sick Leave Act (Act) which goes into effect on January 1, 2017. Under the Act an employee may use personal sick leave benefits provided by the employer for absences due to an illness, injury, or medical appointment of the employee's child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent for reasonable periods of time as the employee's attendance may be necessary, on the same terms upon which the employee is able to use sick leave benefits for the employee's own illness or injury.

- An employer may limit the use of personal sick leave benefits to an amount not less than the personal sick leave that would be accrued during six months at the employee's then current rate of entitlement.

- An employer who has a paid time off policy that meets the requirements of the Act is not required to modify its current policy.

- The Act does not extend the maximum period of leave to which an employee is entitled under the Family Medical Leave Act regardless of whether the employee receives sick leave compensation during that leave.

- An employer may provide greater benefits than what is required under the Act.

WASHINGTON STATE TO VOTE ON PAID SICK LEAVE MEASURE

On November 8, 2016, Washington state voters will vote on Initiative Measure 1433 (Measure) regarding employee paid sick leave.

The measure if passed would require employers to provide paid sick leave starting in 2018 that employees could use in certain circumstances, including to care for family members.

Highlights of the paid sick leave Measure are as follows:

- Employees will accrue at least one hour of paid sick leave for every forty (40) hours worked.

- An employer may provide paid sick leave in advance of accrual provided that such front-loading meets or exceeds the requirements for accrual, use, and carryover of paid sick leave.

- An employee may use paid sick leave for the following reasons:
    - An absence resulting from an employee's mental or physical illness, injury, or health condition.
    - To accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition or an employee's need for preventive medical care.
    - To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition;

  - To care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care.
  - When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such a reason.
  - In the case of domestic violence.

- An employee is entitled to use accrued paid sick leave beginning on the 90th calendar day after the commencement of his or her employment.

- Employers are not prevented from providing more generous paid sick leave policies or permitting use of paid sick leave for additional purposes.

- An employer may require employees to give reasonable notice of an absence from work, so long as such notice does not interfere with an employee's lawful use of paid sick leave.

- For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose.

- For each hour of paid sick leave used, an employee shall be paid the greater of the minimum hourly wage rate or his or her normal hourly compensation.

- The proposal if passed would be effective January 1, 2017.

For a copy of the Measure please click on the link provided below:

http://sos.wa.gov/_assets/elections/initiatives/FinalText_954.pdf

ST. PAUL, MN PASSES PAID SICK TIME ORDINANCE

On September 7, 2016, the St. Paul City Council passed the St. Paul Earned Sick and Safe Time Ordinance (Ordinance), becoming the second city in Minnesota to guarantee paid “sick and safe” leave for employees working within its city limits. The law, will go into effect on July 1, 2017, for employers with 24 or more employees, and on January 1, 2018, for employers with 23 or fewer employees.

Some of the highlights of the Ordinance are as follows:

- Ordinance applies to any employer with one or more employees. It does not, however, apply to the U.S. government, the state of Minnesota, or any county or local government, other than the city of St. Paul.

- Ordinance provides paid sick and safe time leave to all employees, including temporary and part-time employees, who work at least 80 hours a year within the geographic boundaries of St. Paul. As indicated above, new employers must provide unpaid sick and safe time during the first six months of hiring their first employee, but need not provide paid sick and safe time during this period.

- Ordinance does not cover independent contractors.
- Employees begin accruing ESST after eighty (80) hours worked.
- Once an employee has worked 80 hours, they begin accruing ESST at a rate of one hour earned for every 30 hours worked.
- Employees may begin using ESST 90 calendar days after employment.
- The maximum number of ESST hours an employee can earn in each year (calendar, fiscal or whatever time period the employer uses) is capped at 48 hours.
- The maximum number of hours an employee can bank is 80 hours. For example, if an employee already has 80 hours banked going into a calendar year, they cannot begin earning additional hours until they've used up some of their banked hours.
- Sick time may be used for an employee's or an employee's family member's mental or physical illness, need for medical diagnosis or preventative care.
- Safe time may be used when an employee or an employee's family member is a victim of domestic abuse, sexual assault or stalking.
- Family means a child, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, foster child or adopted child and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- Employers are not required to payout unused ESST upon separation from employment.
- Employees may use paid sick time in increments consistent with current business/payroll practices as defined by industry standards or existing employer policies.