Summer 2017 Labor Relations Update

June 26, 2017

RECENT AND UPCOMING 2017 WAGE RATE INCREASES

City and State Minimum Wage Update

California
- Emeryville: $14.00 (55 or fewer employees); $15.20 (56 or more employees) (7/1/2017)
- Los Angeles City/County (unincorporated areas): $12.00 (26 or more employees); $10.50 (25 or fewer employees) (7/1/2017)
- Malibu: $12.00 (26 or more employees); $10.50 (25 or fewer employees) (7/1/2017)
- Pasadena: $12.00 (26 or more employees); $10.50 (25 or fewer employees) (7/1/2017)
- San Francisco: $14.00 (7/1/2017)
- San Leandro: $12.00 (7/1/2017)
- Santa Monica: $12.00 (26 or more employees); $10.50 (25 or fewer employees) (7/1/2017)

District of Columbia: $12.50 (7/1/2017)

Illinois
- Chicago: $11.00 (7/1/2017)
- Cook County: $10.00 (7/1/2017)

Maryland: $9.25 (7/1/2017)
- Montgomery County: $11.50 (7/1/2017)

Nevada: $8.25 (indexed annual increases 7/1/2017)

Oregon: $10.25 (7/1/2017)
- Portland: $11.25 (7/1/2017)
States Move to Preempt Local Minimum Wage and Benefit Ordinances
Since our 2017 winter update, 10 state legislatures have introduced bills that would prevent cities and counties from requiring employers to provide a minimum wage or benefit to workers. More than 20 states currently ban cities and counties from establishing either wage or benefit laws. Those states are Alabama, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah and Wisconsin.

Los Angeles County Fire Department Fire Safety Officer
INCREASE EFFECTIVE 07/01/2017

- Up to 8 hours (4 hr. min): $51.67 an hour (Prior Rate $50.66 an hour)
- 8 to 12 hours: $77.51 an hour (Prior Rate $75.99 an hour)
- 12+ hours - $103.34 an hour (Prior Rate $101.32 an hour)

RECENT AND UPCOMING 2017 BENEFIT RATE INCREASES

Rate Group 40 Benefits Increase
The current total contribution composite rate for New Media Productions budgeted at more than $25,000 a minute and High Budget SVOD Programs is $6.3475 per hour and will increase on July 30, 2017 to $6.5275 per hour.

Local 399 AICP Commercial Benefits Increase
This year, Local 399 AICP Commercial Agreement’s MPI Pension Plan and C.S.A.T.F. contribution rates will increase as below.

Effective July 30, 2017, C.S.A.T.F. contribution rates will increase:
- for Drivers: from $0.36 to $0.46
- for Location Managers: from $0.135 to $0.1725

Rate Group 43 Benefits Increase
Effective March 26, 2017, Rate Group 43’s Active Health, Retiree Health, and Pension Plans will all increase as below. Locals affected by this increase are East Coast Locals 600, 700, 52 and 161.

- Active Health: from $7.975 to $8.415 per hour
- Retiree Health: from $1.790 to $1.960 per hour
- Pension Plan: from $3.821 to $4.073 per hour
COLLECTIVE BARGAINING UPDATES

New DGS Agreement Ratified
Members of the Director's Guild of America (DGA) ratified a new three-year collective bargaining agreement between the DGA and the Alliance of Motion Picture and Television Producers (Agreement). The term of the Agreement shall be for three years, from July 1, 2017 to, and including, June 30, 2020, with the first year’s increases effective as of July 1, 2017.

The terms of the new Agreement include wage increases of 2.5% in the first year of the Agreement (plus a 0.5% increase in employer pension contributions) and 3% in the second and third years. The Agreement also includes enhanced residual formulas for work done for high-budget subscription video on demand (SVOD), such as programs made for Netflix or Amazon Prime. The Agreement also establishes new subscriber tiers to account for subscriber growth, and more than triples residuals for members working on original content in the highest subscriber tier. Additionally, the Agreement also establishes, for the first time, a share of high budget SVOD residuals for unit production managers and assistant directors and, also for the first time, residual payments for related foreign SVOD services.

New WGA Agreement Ratified
Members of the Writers Guild of America (WGA) ratified a new three-year contract which covers the period May 2, 2017, through May 1, 2020.

The WGA notified members on May 5 that the new deal included an $86 million hike in funds from employers for the guild’s troubled health plan. The guild’s summary said minimums will increase 2.0% in the first year of the contract, 2.5% in the second year and 2.5% in the third year. One of the key provisions, agreed to near the end of the negotiations, included the first-ever parental leave coverage of up to eight weeks.

Increase SAG-AFTRA National Television Show Sheet
On March 1, 2017, SAG-AFTRA released the latest version of its National Television Show Sheet. This document contains the National Television Show Listings which includes, but is not limited to, the Production title, Network, Shooting Location and to which Guild the contributions should be directed.

This National Television Show Sheet can be found here.

Unions Winning More Elections, but Organizing Fewer New Workers
Unions are winning representation elections at the highest rate in four years, but fewer workers were organized, agree 57,800 (lowest in four years), down from 63,300 new members in 2015. About half of all union members live in just seven states: California, New York, Illinois, Pennsylvania, Michigan, Ohio and New
PAID FAMILY LEAVE

D.C. Passes Expansive Paid Leave Law
On December 20, 2016, after Cast & Crew’s Winter 2017 Labor Relations update, the District of Columbia passed the Universal Paid Leave Amendment Act, which provides for a combined 16 weeks of paid time off for parental, family and personal sick leave. Starting in July of 2019, employers will have to pay a 0.62% payroll tax to finance the program. Employers don’t have to pay the employees directly; instead, they’ll pay into a fund that will pay the employees.

New York Proposes Regulations on State Paid Family Leave Law
On February 22, 2017, the New York State Workers’ Compensation Board (WCB) published proposed regulations that explain and clarify many aspects of the New York State Paid Family Leave Law (PFL), including, among other things, employers’ rights and responsibilities in providing paid family leave, employee eligibility for such leave, and the phase-in schedule of the PFL program. The PFL will go into effect on January 1, 2018, and will require virtually all private employers in New York to provide paid family leave benefits to eligible employees.

Next Phase of San Francisco’s Paid Parental Leave Ordinance to go into Effect July 1, 2017
Effective July 1, 2017, the Paid Parental Leave Ordinance (PPLO) applies to employers with 35 or more employees and, on January 1, 2018, to employers with 20 or more employees. The PPLO became effective on January 1, 2017, for employers with 50 or more employees. Union employees are not entitled to paid parental leave if: 1) the union’s collective bargaining agreement (CBA) expressly waives the ordinance’s protections; or 2) the parties entered into the CBA before the ordinance’s effective date.

For more information on the New York, San Francisco and Washington D.C. PFL laws please read our notice by clicking here.

RIGHT-TO-WORK UPDATES

Missouri and Kentucky Become Right-to-Work States
On February 6, 2017, Missouri Governor Eric Greitens signed Senate Bill 19, making Missouri our nation’s 28th right-to-work state. Missouri’s right-to-work statute will become effective on August 28, 2017.

Right-to-work states prohibit “union security” clauses in collective bargaining agreements. Without union security clauses, non-union employees are allowed to work in union-protected positions (and receive union
benefits) without having to join the union or pay union dues. In the last five years, six states have passed right-to-work legislation (Indiana, Michigan, Wisconsin, West Virginia, Kentucky and Missouri).

For more information on right-to-work states, please see Cast & Crew’s FAQ [here](#).

**PAID SICK LEAVE UPDATES**

States and municipalities across the country continue to pass paid sick leave laws, leaving multi-state employers with the task of addressing a variety of sick leave requirements. Six sick leave laws passed last year will go into effect beginning on **July 1, 2017**:

**Arizona**: Covered employers must allow eligible employees to earn and accrue paid sick leave up to a cap that is based on the employer’s size.

**Georgia**: Covered employers that offer paid sick leave to employees must allow employees to use up to five hours of their sick leave to care for an immediate family member.

**City of Chicago and Cook County, Illinois**: Covered employers are required to allow eligible employees to earn and accrue up to 40 hours of paid sick leave each year. Recall that Illinois also passed a state-wide sick leave law that took effect on January 1, 2017. More than thirty municipalities in Cook County have opted out of the ordinance. Contact Labor Relations for more information if producing in Cook County, IL.

**Minneapolis and St. Paul, Minnesota**: Covered employers are required to allow eligible employees to earn and accrue up to 80 hours of paid sick leave every two years. The ordinances for each city are worded differently in several areas:

Numerous sick leave laws took effect in January 2017, and at least five states are considering or voting on their own sick leave law proposals, including Maine, Maryland, Michigan, Nevada and Rhode Island. Employers with employees in jurisdictions with sick leave laws must ensure compliance with all applicable mandates. Some sick leave laws require employers to allow part-time, seasonal and temporary employees the opportunity to earn and accrue sick leave.

**City of Los Angeles Updates Paid Sick Leave Rules and FAQs**

On March 14, 2017, the Los Angeles Office of Wage Standards (OWS) revised its rules and frequently asked questions (FAQs) for the Minimum Wage Ordinance (MWO), which includes mandatory paid sick leave requirements. Please read below for key aspects of the revisions.
What is the rate of pay for an employee using sick time?
The revised rules require employers to use either of the following calculation methods: 1) Use the regular rate of pay for the workweek in which sick time is used (disregard overtime work); or 2) Divide total wages—excluding overtime premium pay—by total hours worked in the full pay periods of the prior 90 days of employment. Per the OWS, exempt employees are not covered by the MWO.

May an employer use an existing paid time off plan to satisfy the MWO?
The MWO provides that employers with a paid leave or paid time off policy that grants 48 hours of compensated time off do not have to provide additional paid sick leave. The OWS has clarified that paid time off includes, but is not limited to, vacation, sick, paid time off, floating holiday, holiday, or personal days.

An employer may establish a paid leave policy that does not meet all the law’s requirements if the policy is overall more generous to employees. The OWS will examine the below benefits to make a determination as to whether an employer’s plan meets an employer’s obligations:

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<thead>
<tr>
<th>Group 1</th>
<th>Group 2</th>
<th>Group 3</th>
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<tr>
<td>Required benefits:</td>
<td>At least one of these benefits must be provided, but providing only one may be insufficient, depending on the benefit’s value:</td>
<td>These benefits will also be considered:</td>
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<tr>
<td>Access to a combined paid and/or unpaid sick leave totaling 48 hours per year that can be taken with no adverse action</td>
<td>• Employer pays more than twice the city minimum wage • Employer offers paid compensated time off such as holidays, paid vacation days, etc. • Employers pay into a trust fund to benefit employees</td>
<td>• Employer offers a health benefit at no cost to the employee • Employer offers a retirement package • Employer offers flexible schedules • Deferred Compensation Package including residuals</td>
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May an employer institute a “hard cap” for accrual purposes?
The revised regulations confirm hard accrual caps are prohibited if employers use an accrual-based instead of a frontloading system. A maximum bank operates as a temporary cap on accrual—employees stop accruing once their leave bank contains a specific number of unused hours (in Los Angeles, employers can set the maximum amount at 72 hours). Whatever amount is in the bank at the end of the year must be carried over to the following year. Employees only resume accruing leave after they use the bank’s already-accrued leave.
NEWS IN LABOR & EMPLOYMENT

Meal Breaks
A Massachusetts Superior Court judge recently held that meal breaks count as “compensable working time,” for which employees must be paid unless the employee is relieved of all work-related duties. The court rejected the employer’s argument that the court should apply the more lenient federal standard, which focuses on whether the break time is spent “predominantly” for the benefit of the employer. DeVito v. Longwood Security Services, Inc.

Fourth Circuit Decision Establishes New Six-Factor Test for Determining Joint Employment under the FLSA
On January 25, 2017, the U.S. Court of Appeals for the Fourth Circuit established a new six-factor test to determine whether two or more entities are joint employers for purposes of the Fair Labor Standards Act (“FLSA”). The Fourth Circuit’s new, unique standard all but rejects the “economic realities” and similar circuit court tests in favor of a test that expands joint employer liability and is less favorable for employers. Salinas v. Commercial Interiors Inc.

Federal Court Finds that Requirement to Contribute to Fringe Benefit Funds Can Extend Past Decertification
On December 20, 2016, the Seventh Circuit issued an opinion holding that multiemployer benefit funds were entitled to collect contributions required under collective bargaining agreements that were not to expire until 2015, even though the employees had previously decertified the union in 2013. The employer had negotiated three agreements in 2010 that were set to expire in 2015. The CBAs required the employer to make contributions to a fringe benefit fund on behalf of its covered employees. In 2013, the employees voted to decertify the union as their collective bargaining representative. At that point, following well-established practice, the employer stopped contributing to the Fund because it believed that all of its contractual obligations under the agreement had ended. The Court ruled in favor of the Fund, reasoning that the Fund was a third-party beneficiary. This means that decertification doesn’t end the employer’s responsibility to continue making contributions until the agreement expires. It remains to be seen how this decision may affect assessing withdraw liability when negotiating new agreements.

California: Employees on Rest Breaks Must be Off-Duty
On December 22, 2016, the California Supreme Court ruled that California law requires employees on rest breaks be relieved of all duties. The court determined that by requiring employees to carry phones/radios and remain on-call during rest breaks, the employer failed in its responsibility to provide duty-free rest breaks. They noted that “California law requires employers to relieve their employees of all work-related duties and employer control during 10-minute rest periods.” The decision emphasizes California employers’ obligations to provide duty free rest breaks, with no exceptions. Also, while employees may choose to waive
meal periods in certain circumstances, they cannot waive rest breaks. As the Court concluded, “a rest period, in short, must be a period of rest.” Augustus v. ABM Security Services, Inc.

California Court of Appeal Clarifies Wage Statement Requirements for Use of Unique Employee Numbers, Hourly Rates for PTO or Vacation

The California Court of Appeal has held that: 1) the use of payroll service provider generated unique employee file numbers on employee wage statements—in lieu of the employer’s internal employee identification number or last four digits of employee social security numbers—is legally permissible under California law; and 2) employers are not required to state applicable hourly rates for payments of accrued paid time off (PTO) or vacation on exempt employee wage statements. Blaire v. Dole Food Co.

Pursuant to California Labor Code section 226(a)(7), employee wage statements must state either “only the last four digits of [the employee’s] social security number or an employee identification number other than a social security number.” In this case, the employer utilized a payroll servicing company to issue employee wage statements. The payroll servicing company generated its own unique employee “file” number for payroll purposes, and placed these “file” numbers on employee wage statements, in lieu of the last four digits of employees’ social security numbers or the employer’s internal employee ID numbers.

The court found the unique employee “file” numbers generated and placed on employee wage statements by the payroll servicing company qualified as a unique “employee identification number” required by Labor Code section 226(a)(7). The court held Labor Code section 226 does not require that employers use employer-generated internal employee identification numbers assigned upon hire rather than an “equally unique personal ID number simultaneously created for tax and payroll purposes.” The court explained, “Nothing in section 226, subdivision (a)(7) prohibits an employer’s use of a unique personal ID or file number, so long as the number chosen consistently appears on the employee’s wage statement. The label attached to the number is not material.”

Additionally, the court found that Labor Code section 226(a)(9), which requires employee wages statements state “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee,” does not apply to payments of accrued paid time off to exempt employees. The court first noted that vacation or paid time off does not constitute “hours worked.” Then it reiterated that Labor Code section 226(a)(2) does not require employers to list the hours worked and the applicable hourly rate for exempt salaried employees. Section 226(a)(2) provides that employers must state employees’ “total hours worked…, except for any employee whose compensation is based on a salary and who is exempt from paying overtime.” The court found that if “the number of hours worked need not be itemized on an exempt employee’s wage statement, there is no ‘applicable hourly rate’ for an employer to furnish.” Accordingly, the court held that employers are not required to provide an hourly rate for payment of paid time off or vacation to salaried exempt employees.
California Supreme Court’s Ruling Clarifies “Day of Rest” Requirement

The California Supreme Court held on May 8, 2017 that California’s law requiring one day of rest in seven looks only at the employer’s defined workweek when determining the applicable period of time to be analyzed for compliance and liability purposes, and does not specifically require employers to provide one day of rest after six preceding calendar days of work. The decision provides that the sole obligation of employers is to apprise their workforces of their entitlement to a day of rest and that they can thereafter let the employees decide on their own if they choose to schedule themselves to work a seventh day.

California Labor Commission

The California Labor Commissioner’s Office says it is aggressively going after companies accused of “wage theft.” According to the Labor Commission, a wage claim is filed every four minutes—a total of 30,000 to 40,000 per year statewide. The Labor Commission’s statement is another reminder that employers need to ensure that their practice and policies comply with all requirements of the Labor Code.

California Bill Would Increase Overtime Exemption Salary Threshold

Legislation just introduced in the California Legislature would raise the salary thresholds for overtime exemptions under California law to $47,476, the same levels that were proposed by the Obama administration that has been blocked by a federal judge in Texas.

The bill would provide that an executive, administrative or professional employee is exempt from overtime only if they perform exempt work and earn a monthly salary equivalent to $3,956 or twice the state minimum wage, whichever is higher. California’s minimum wage is scheduled to increase in a series of steps, ultimately to $15 per hour. Therefore, eventually (by 2019 for employers with 26 or more employees) the salary threshold under California law would have exceeded the proposed federal level.

The information contained in this publication has been abridged from laws, court decisions, news articles and administrative rulings. The preceding information should not be construed or relied upon as legal advice and is subject to change without notice. If you have questions concerning particular situations, specific payroll administration or labor relations issues, please contact your labor relations representative.