With wage hikes, consider the big picture

By Wendy Lane

On July 1, California's minimum hourly wage increased from $8 to $9 per hour. In January 2016, the hourly rate will increase again to $10 per hour. Undoubtedly, many employers will seek to reduce overhead to offset these increased costs. However, employers should also be wary of considerable hidden costs that can arise if they fail to respond to the minimum wage increase carefully.

Most employers realize that overtime rates necessarily increase as a result of the minimum wage increase — employers paying minimum wages to their employees must now pay $13.50 per hour for time-and-a-half pay and $18 per hour for double time.

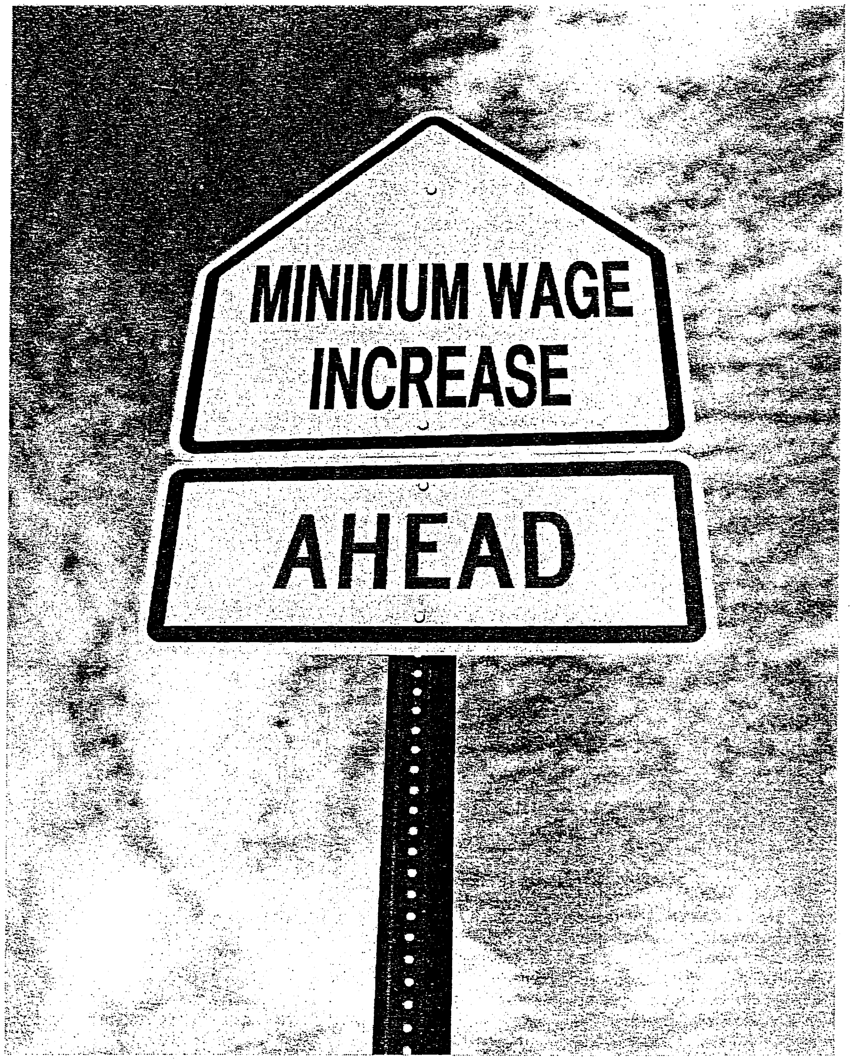
However, many employers do not think about the impact that the minimum wage increase has on their salaried employees who are exempt from overtime. Specifically, employers must be very careful to make sure that employees who fall under the administrative, professional and executive exemptions are, in addition to fulfilling the "exempt duties" requirements, still making the minimum salary required to maintain their exempt status.

Under California Labor Code Section 515, the minimum salary for employees to qualify under the aforementioned "white collar" exemptions is based on a factor of no less than twice the minimum wage. Therefore, the minimum wage increase has a direct impact on exempt employees' minimum salary requirements. Exempt employees who were making the minimum annual salary of $33,280 prior to July 1 lost their exempt status if their salary was not adjusted to be at least twice the new $9 per hour minimum wage, which translates to a monthly salary of $3,120 or an annual salary of $37,440. (The minimum salary for white collar exemptions will go up again to $41,600 on Jan. 1, 2016.)

The minimum wage increase also affects employees subject to the commissioned salesperson exemption. Under Wage Orders 4 and 7, this exemption requires not only that commissions make up more than half the employee's compensation, but also that the employee earn more than one and one-half the state minimum wage for all hours worked. Therefore, commissioned salespersons will need to earn at least $13.50 per hour in July 2014, and at least $15.00 per hour by January 2016 in order to be exempt from overtime.

Failure to maintain the exempt status of employees by meeting the inflated minimum salary requirement will leave employers subject to costly litigation regarding claims for unpaid overtime and missed meal and rest periods. These cases can be difficult for employers to defend against. As employers generally do not require exempt employees to track their time and their meal breaks, they often have no documentary proof to refute claims when a misclassified employee files suit and alleges they missed meal periods and/or worked overtime. (Employers can try to mitigate this risk if they require their exempt employees to monitor their time for other business-related reasons, such as client billing purposes.)

An employee who files a wage suit for violation of the salary-basis rules (and resulting misclassification as an exempt employee) can potentially recover, among other things, several years' worth of overtime pay and other compensation and penalties, including for missed meal periods and rest breaks and for improper wage statements. Moreover, the employer will be liable for the employee's attorney's fees if the employee prevails on his or her wage claims.



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An employer's knee-jerk reactions to these minimum wage increases may be to reduce their work force and/or terminate higher-paid employees. However, employers should consider all factors before making such a decision. According to the March 2014 UC Berkeley Labor Center Report, "Economists have increasingly recognized that raising the minimum wage does not automatically mean that employment will fall. Increased labor costs can be absorbed through a variety of other channels, including savings from reduced worker turnover and improved efficiency, higher prices, and lower profits. Modern economics therefore regards the employment effect of a minimum wage increase as a question that is not decided by theory, but by empirical testing ... Researchers find that increases in the minimum wage reduce employee turnover, translating into a reduction in direct costs (recruitment, selection, and training of new workers) and a reduction in indirect costs (lost sales, lower quality service, and lost productivity as the new workers learn on the job). Some studies have also identified additional benefits of higher wages, including improved morale, improved work performance, and reductions in absenteeism."

If an employer nevertheless determines, after careful consideration, that it is necessary to terminate some of its workforce, the employer should be very cautious in terminating employees who are members of any protected class — for example, employees who are 40 or older, who are disabled and/or have taken protected medical or family leave, who are pregnant, who have filed a worker's compensation claim, or who have previously complained about any number of working conditions (ranging from everything from air temperature to harassment). Even if an employer's only reason for terminating the employee is to cut costs (which is a permissible reason to terminate an at-will employee), it may be difficult for the employer to prove that other, retaliatory reasons did not influence the termination decision if these other factors are also in play — especially if multiple employees in such protected categories are terminated at the same time.

Employers need to look at the bigger picture. Instead of immediately implementing staff reductions to offset the payroll increases to come, employers should calculate both the risks of termination-related litigation and possible rewards for providing higher rates to both hourly and salaried exempt employees also affected by the legislation. Moreover, employers should always seek legal counsel when terminating multiple employees at the same time.

In any event, employers are going to need to come to terms with the increased minimum wage. In addition to the already-legislated increase in 2016, there is currently new proposed legislation, which recently passed the Senate committee, pursuant to which the minimum wage would be raised to $13 per hour by 2017 and, beginning in 2018, would be automatically indexed to inflation each year.

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