PETTITKOHN
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EMPLOYMENT LAW UPDATE

Relationship-Driven Results *January 2016*

2015 Attorney Awards

Tom Ingrassia
San Diego Business Journal's
"Best of the Bar" 2015
and
San Diego "Super Lawyers" 2015

Jennifer Lutz
San Diego "Super Lawyers" 2015

Jenna Leyton-Jones
selected for inclusion in
San Diego Business Journal's
"Best of the Bar" 2015
and
San Diego "Rising Stars" 2015
and
based on a peer review survey received an **AV Preeminent** rating from Martindale-Hubbell - highest rating for legal ability and ethical standards

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Legislative Update: New Laws for the New Year

What better way to ring in the new year than to review some of the laws that impact California employers beginning in 2016. This is an opportune time for employers to review their policies and procedures regarding these recent changes.

- Minimum wage increase: California's minimum wage increased to $10 per hour effective January 1, 2016. Employers should ensure that exempt employees meet the salary basis test in light of this increase.

- IRS Mileage Rate Decrease: The IRS has decreased the standard mileage reimbursement rates for 2016. The new standard mileage rates for the use of a car (also vans, pickups, or panel trucks) is 54 cents per mile for business miles driven, 19 cents per mile driven for medical or moving purposes, and 14 cents per mile driven in service of charitable organizations. Employers have the option to calculate the actual cost of business miles driven in lieu of using the IRS standard rate.

- Equal pay (SB 358): California's new law addressing equal pay holds employers liable for pay differentials between men and women for jobs which require the same or substantially similar work, regardless of whether the employees are within the same establishment. Additionally, employers cannot prevent an employee from inquiring about another employee's wages or aiding or encouraging another employee to exercise his or her rights under the law. This law also extends related recordkeeping obligations from two years to three years.

- FEHA protections for requesting reasonable accommodations (AB 987): This law expands protections under the Fair Employment and Housing Act to prohibit retaliation or discrimination against an employee who requests accommodations, regardless of whether his or her request is granted.

- Expanded whistleblower protection (AB 1509): This law expands retaliation protection to family members of employees who engage in, or are perceived to engage in, protected activity.

We are dedicated to providing the highest quality legal services and obtaining superior results in partnership with those who entrust us with their needs for counsel.

We enjoy a dynamic and empowering work environment that promotes teamwork, respect, growth, diversity, and a high quality of life.

We act with unparalleled integrity and professionalism at all times to earn the respect and confidence of all with whom we deal.

- Expanded child care leave (SB 579): The law expands permissible reasons for child care leave to include attending to emergencies, and finding, enrolling, or reenrolling a child in a school or with a child care provider. The law also expands the definition of "parent" to include stepparents, foster parents, and persons standing *in loco parentis* to a child. Employers with 25 or more employees are covered under the law.

- E-Verify limitations (AB 622): Employers are prohibited from using the federal E-Verify system to check the employment authorization status of any existing employee or applicant who has not yet been offered employment, unless the employer is required by federal law to use the system. In addition, if an employer uses E-Verify in an authorized manner and obtains a tentative non-confirmation, the employer must provide notification to the employee as soon as practicable.

- Piece-rate compensation (AB 1513): This law makes it significantly more difficult for employers to pay employees by piece rate. Employers must compensate piece-rate employees for rest and recovery periods and other nonproductive time. In addition, wage statements must show the total hours of rest and recovery periods, the rate of compensation, and total gross wages. Employers who pay piece-rate wages may want to reconsider doing so.

Judicial Update

U.S. Supreme Court Rejects California Court's Attempt to Invalidate Class Arbitration Waivers

The U.S. Supreme Court issued an important ruling regarding arbitration agreements in *DirecTV, Inc. v. Imburgia*. While this case did not arise in an employment context, it has implications for employers who use arbitration agreements containing class action waivers. DirecTV's service contract with customers included a mandatory binding arbitration provision with a class arbitration waiver, meaning that the customer would be forced to seek only individual relief in arbitration. A California Court of Appeal found that the class arbitration waiver was unenforceable under its interpretation of the service contract.

The U.S. Supreme Court, however, reiterated that the Federal Arbitration Act preempts state law judicial interpretations that do not place arbitration contracts on an equal footing with other types of contracts, and upheld the class waiver. California courts have routinely attempted to invalidate arbitration contracts, ignoring federal authority on the topic. This decision may finally send a message to California courts that the U.S. Supreme Court will no longer tolerate California's distaste for arbitration.

Ninth Circuit Court of Appeals Allows HR Director's FLSA Retaliation Claim to Proceed

In *Rosenfield v. GlobalTranz Enterprises, Inc.*, the Ninth Circuit Court of Appeals ruled that a former employee could proceed with a retaliation claim under the federal Fair Labor Standards Act ("FLSA"). The employee, a director of

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human resources for GlobalTranz Enterprises, Inc. ("GlobalTranz"), reported to her superiors throughout her employment that she believed the company was not compliant with the FLSA, even though monitoring FLSA compliance was not her direct responsibility. After she was fired, the employee sued GlobalTranz under the FLSA and Arizona state law.

The district court granted summary judgment for GlobalTranz, finding that the employee had not filed a "complaint" which would trigger protection under the FLSA because her job was ensuring compliance. The employee appealed. On appeal, the Ninth Circuit discussed the employee's role as a manager and director of human resources. The court acknowledged that a managerial employee who is tasked with reporting on the company's compliance ordinarily would not put the employer on notice that the manager was filing a complaint; however the question must be resolved on a case-by-case basis. In this case, the court determined that the manager was not directly responsible for ensuring compliance with the FLSA, and her advocacy on the part of other employees was not merely part of her regular job duties. The court found that the frequency and formality of the manager's complaints could lead a reasonable jury to conclude that she engaged in protected activity under the FLSA. The fact that the complaining employee was a manager was an important consideration in the analysis; however, once again, there is no bright-line rule.

This case underscores the broad protections given to employees in all positions who raise complaints about wage and hour laws. Because of the lack of a bright-line rule, there will likely be litigation regarding the standard for "filing a complaint" in the context of FLSA retaliation claims, and employers are less likely to succeed on summary judgment motions attacking those claims.

This is Pettit Kohn Ingrassia & Lutz PC's monthly employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Jenna Leyton-Jones, Ryan Nell, Lauren Bates, Jennifer Suberlak or Shannon Finley at (858) 755-8500; or Jennifer Weidinger, Tristan Mullis or Andrew Chung at (310) 649-5772.