



Piece-Rate Compensation
 Labor Code § 226.2 imposes additional requirements that increase the complexity of paying employees on a piece- rate basis.
• Impact:
 Ensure that employees are separately compensated for rest and recovery periods and all non-productive time.
 Properly calculate the wages owed during those periods.
 Ensure itemized wage statements of piece-rate employees contain all piece-rate information as required.
aalrr



California Fair Pay Act In 2015, SB 358 was enacted to address the gender wage gap in California and expanded equal pay protections under existing law. SB 358 modified Labor Code § 1197.5. • Ensure equal employment opportunity and anti-discrimination policies expressly prohibit wage discrimination. · Refrain from prohibiting or discouraging employees from discussing their wages or the wages of other employees. · Audit pay practices for pay differentials. · Document guidelines and requirements for salaries and bonuses Train managers to comply with federal and state equal pay laws. California Fair Pay Act Continued Introduced February 16, 2016, SB1063 could further amend Labor Code § 1197.5 to include race and ethnicity. • Impact. Employers should monitor the progress of SB 1063 which may be acted upon as early as March 2016.

EEOC Proposes Requesting Equal Pay Data From Employers On July 14, 2016, the EEOC published a revised proposed plan to require employers with 100 or more employees to report pay data in an effort to uncover potential pay discrimination. Impact: If finalized, employers will face an additional administrative burden in compiling this annual report. Data may be used to bring actions for alleged pay discrimination. Be prepared to provide detailed explanations for pay discrepancies.

aa*l*rr



Pending Legislation: The Double Pay on the Holiday Act of 2016 • AB 67, which was read for the first time on January 27th, would enact Labor Code § 511.5. This section would require retail and grocery store employers to pay at least 2x the regular rate of pay to an employee who works on Thanksgiving Day. • Impact: • The most recent version revises the double pay requirement to apply to employers with more than 500 employees. • Retail and grocery store organizations who meet this criteria should stay up on this new proposal for holiday pay.

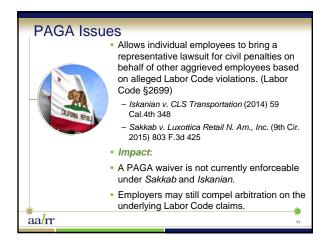
Pending Wage & Hour Cases to Watch California's Day-of-Rest Requirements Labor Code §§ 551 and 552 Mendoza v. Nordstrom, Inc. (9th Cir. 2015) 778 F.3d 834 Impact: Until a decision is rendered by the CA Supreme Court, consider implementing policies and procedures that ensure employees do not work more than six consecutive days. May reduce potential exposure in the event of an adverse ruling by the Court.

Pending Wage & Hour Cases to Watch Continued On-Call Rest Periods - Augustus v. ABM Security Service, Inc. (2014) 233 Cal.App.4th 1065 Impact: Until a decision is rendered by the CA Supreme Court, employers should relieve employees of all duties during their rest breaks. If employees remain on call or otherwise available to work during their rest breaks, employers should implement procedures to allow employees to report interrupted rest breaks. Be prepared to pay employees one hour of premium pay for missed rest breaks if the employee performs work.



Pending Wage & Hour Cases to Watch Continued Automobile Salesperson Exemption - Navarro v. Encino Motorcars, LLC (9th Cir. 2015) 780 F.3d 1267 Impact: Under Wage Order 7, §3(D), commission salespersons who sell to the public, such as service advisors, may be exempt from overtime if their earnings exceed one-andone-half CA minimum wage, and more than half of the employee's compensation represents commissions. A similar exemption is contained in the FLSA. (29 U.S.C § 207(i).) Where employees meet the criteria and are compensated in accordance with the provision, Navarro will be insignificant.

Revisions to FLSA Overtime Provisions Proposed Increase in Federal Salary Basis Test Minimum salary to \$47,476. Impact: Start preparing for the new regulations now by reading the proposed rule and the DOL's FAQs publication. The final regulations should be published in July 2016 and could become effective 60 days later.





SB 836 (6/27/16)	
PAGA claims & responses must be filed online with \$ filing fee	\$75
 Extends review period to 60 days for LWDA 	
Plaintiff cannot file suit until 65 days after sending PA notice	AGA
Employer still has only 33 days to cure	
aa <i>l</i> rr	12

Limited "Cure" Period for Wage Statement Violations

- Labor Code § 226 requires employers to provide employees itemized wage statements containing nine specific items, including inclusive dates of pay and the name/address of the employer.
 - Allows employees suffering injury to recover all actual damages
- Effective October 2, 2015, Assembly Bill 1506 amended PAGA to provide employers a limited opportunity to cure a violation
- Impact:
- Employers who receive a PAGA notice regarding defective itemized wage statements should immediately take steps to determine whether they are able to cure the violation.

aa*l*rr

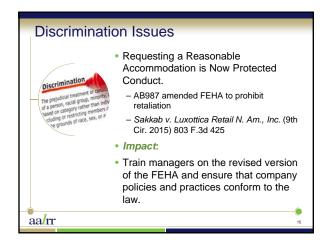
Curtailment of PAGA Suits May Be On The Horizon

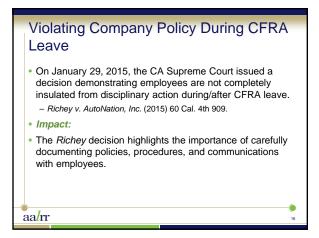
- Governor Brown recently submitted a budget proposal to the California Legislature that would increase state oversight of PAGA claims and amend the PAGA statute.
- Impact:
- The proposal could make it more difficult for employees to bring PAGA claims against employers.
- · Could lower the cost of doing business in CA.
- Proposal could increase the rate of administrative handling of PAGA cases vs. the courts.
- Proposal already facing criticism from individuals who view the proposed changes as an attack on worker protections.

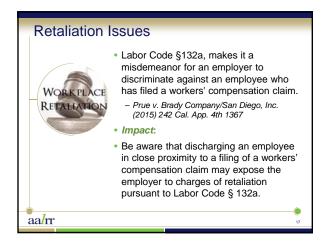
aa*l*r

14251972v1 ©2016	6 Atkinson	, Andelson,	Loya	, Ruud 8	& Romo











Increased Scope of Anti-Retaliation Rules CA employers prohibited from retaliating against an employee who makes a complaint to a government or law enforcement agency. Cardenas v. M. Fanaian, D.D.S., Inc. (2015) 240 Cal.App 4th 1167 Employee has reasonable cause to believe that information discloses a violation of state or federal law Impact: Provides clarification of protected conduct. Be wary should conduct be considered protected activity.

EEOC Position Statement In a 2/18/16 press release, the EEOC will give employees access to employer position statements. Impact: Ensure rationales for employment decisions remain consistent throughout litigation.

Terms and Conditions of Employment • Suitable Seating Requirement. "When the nature of work reasonably permits the use of seats." • Kilby v. CVS Pharmacy, Inc. (9th Cir. 2013) 739 F.3d 1192. • Ruling (CA Supreme Court - April 2016): • Review tasks performed at a specific work location • Consider totality of circumstances including business judgment and workspace layout



Bills Prohibiting Human Trafficking AB 1595 is moving through the legislature which would require employers to provide mass transportation services to train certain employees to recognize the signs of human trafficking and how to report. Impact: Expect more government scrutiny for signs of forced exploitative labor.

Hiring Practices	
 Prohibition in requesting salary information. Prohibition on inquiries regarding custodial detentions juvenile convictions. Impact: 	and
 If proposed laws enacted, ensure that interviewers of prospective employees understand the prohibitions against requesting pay and criminal histories. 	
aalrr	

