Engage PEO Client Alert:

California Updates: Overtime Exemption Rate for Computer Software Employees; "ABC" Test for Independent Contractors; Rounding Time Punches for Meal Periods Prohibited

Overtime Exemption for Computer Software Employees

Earlier this year, the California Department of Industrial Relations announced a new salary level to determine whether computer software employees are properly classified as "exempt" from overtime requirements (rather than "nonexempt" and eligible to earn overtime).

Employers who have exempt employees performing computer software duties will need to review their salaries to ensure they meet or exceed the 2021 salary requirement of $47.48/Hour or $98,907,70/Year.

"ABC Test" for Independent Contractors Adopted

The state legislature enacted a law earlier this year re-stating what courts have already ruled -- a worker is generally considered an employee (versus an independent contractor) unless:

- **A.** the worker is not under the company's direction and control in performing the work in question;
- **B.** the worker's business is not in the company's usual course of business; and
- **C.** the worker is customarily engaged in an independent trade or business.

The law reiterated a court decision that the ABC test applies retroactively.

While this new legislative action does not change the rule that court rulings had already given, independent contractor misclassification is a hot topic and likely to be an area where government agencies are active in enforcement. If you have independent contractors, you may want to review whether they meet the ABC test above.

Employers Prohibited from Rounding Time Punches for Meal Periods

Generally, California law requires employers to provide a 30-minute meal period within the 5th hour of work and a second 30-minute meal period within the 10th. If the employer does not provide this meal period, they must pay the employee an hour of pay at their regular rate.

Some employer timekeeping systems round meal periods to the nearest ten minutes. This is not a best practice because a non-compliant meal period might slip under the radar. For example, an employee who was only provided 26 minutes would be recorded as taking a meal break of "30 minutes."

A recent court case affirmed that this rule is clear-cut: meal periods must be no less than 30 actual minutes, and 26 minutes does not meet the requirement. Employers will want to review their timekeeping practices and ensure that their systems do not round for meal periods.

The case also offered a few clues about employer best practices to prove that a meal period was offered, and the employee declined to take one. If a timecard does not show a meal period, the employer does have the opportunity to prove either that:

- a meal period was taken, or
- the employee knowingly and voluntarily decided not to take a meal period, even though the employer-provided one.

A company might use employee acknowledgment forms, or timekeeping systems might include dropdown choices for employees such as:

- “I was provided an opportunity to take a 30 min break before the end of my 5th hour of work but chose not to”;
- “I was provided an opportunity to take a 30 min break before the end of my 5th hour of work but chose to take a shorter/later break.”

Please contact your Engage Human Resources Consultant with any questions about your employees’ FLSA status, independent contractors, or meal period compliance.