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*Simpson Delmore Greene
Welcomes Cassandra Bolten,
Esq.*

Cassandra Bolten, Esq. Joins Simpson Delmore Greene LLP

Cassandra ("Cassie") Bolten has joined our employment law team. Cassie received her undergraduate degree from Eckerd College in St. Petersburg, Florida, before graduating, *cum laude*, from the Sandra Day O'Connor College of Law at Arizona State University. She is an experienced litigator who has taken numerous cases to trial. Cassie is also an avid St. Louis Cardinals baseball fan.

Earned Sick Leave and Minimum Wage Ordinance Now In Effect – Additional Changes Are In Motion

On July 11, 2016, San Diego's Earned Sick Leave and Minimum Wage Ordinance ("Ordinance") took effect. The Ordinance has understandably spawned a lot of confusion, and our office has received a number of very good questions from our clients. We provide this Employment Law Flash Update to address the most frequently asked questions we have received. Please call us directly if your question is not answered here.

Does The Ordinance Impact My Business?

A common misconception is that the Ordinance only impacts employers who have an office located within the limits of the city of San Diego (the "City"); not so. The Ordinance impacts all employers who have one or more employees who perform *at least two hours of work in the City in one or more weeks of the year*. Regardless of where your office is located, the Ordinance impacts your business if you have employees who will perform work in the City (such as, client meetings in the City, service calls in the City, pick-up/drop-off services in the City, etc.). Once an employee qualifies for the Ordinance's effect, the employee is entitled to the Ordinance's benefits for those hours worked in the City.

The Ordinance does *not* impact employees who work exclusively outside of the City. Several clients have asked whether their entire workforce should receive the same level of benefits as those which they are required to provide to their San Diego workers. While that is certainly something to consider, please know that it is not required by the law.

What Changes Were Made to The Minimum Wage?

The minimum wage in San Diego increased to \$10.50 as of July 11, 2016. *If you have inadvertently underpaid an employee since that time, you should make an adjustment on the next payroll to ensure all employees receive at least \$10.50 per hour for every hour worked beginning on July 11, 2016.*

The City requires employers to post an official notice of the minimum wage increase in a conspicuous place where employees can easily read it. The minimum wage posting can be found [here](#).

Minimum wage will increase again on January 1, 2017; this time to \$11.50. Thereafter, beginning in 2019, the minimum wage will increase on an annual basis as determined by a consumer price index. Please plan accordingly.



The City's minimum wage hike does not impact the minimum remuneration for exempt employees. As a reminder, minimum remuneration for exempt employees in California is \$41,600, and minimum remuneration for the executive, administrative, and professional exemption under the federal Fair Labor Standards Act is \$47,476.

What is Different About San Diego's Paid Sick Leave?

Among other things, the Ordinance increased the minimum number of paid sick leave days to which employees are entitled from the three days (24 hours) required by state law, to five days (40 hours). Other changes include:

- Employees begin to accrue sick leave at the commencement of employment;
- No caps on accrual are permitted (however, use of paid sick leave can be capped at 40 hours per benefit year);
- No caps on carry over are permitted; and,
- The Ordinance does not allow for the "banking" or "front-loading" method of paid sick leave compliance (this method allows employers to front-load required sick leave to employees at the beginning of each benefit year).

The City also requires employers to post an official earned sick leave notice in a conspicuous place where employees can easily read it. The earned sick leave posting can be found [here](#).

In addition, employers must provide each employee with written notice of its legal name, fictitious business name, address, telephone number, and its requirements under the Ordinance. The City has created a template notice, which can be found [here](#).

Changes Are Likely Coming to Paid Sick Leave

On July 11, 2016, the City Council also approved the first reading of a much anticipated implementing ordinance. The implementing ordinance would amend the current Ordinance in several important ways. We address the major changes below. If you would like to review the full text of the implementing ordinance, it can be found [here](#).

Key changes to the proposed implementation ordinance include:

- Allows employers to cap employee accrual of sick leave at 80 hours;

- Allows employers to front-load no less than 40 hours of sick leave to employees at the beginning of each benefit year ("banking" or "front-loading.");
 - If this method is used, employers are not required to track employees' sick leave accrual and need not allow unused sick leave to carry over to the following year; and
- Clarifies language in the Ordinance to be more consistent with the statewide paid sick leave law.

The proposed implementing ordinance also includes:

- Employers who provide employees with at least 40 hours of Paid Time Off (that is, paid vacation or paid personal days which can be used for the same purposes and under the same conditions as the ordinance) are not required to provide additional leave; and
- Employers who provide greater Paid Time Off than is required by the ordinance (such as through a collective bargaining agreement or benefit plan) are deemed in compliance with the law, even if the employer uses an alternative method for calculation, payment, or use of paid sick leave.

The City Council will need to approve the implementing ordinance at a second reading before it will go to the Mayor to approve or veto. If the Mayor approves the implementing ordinance, it will take effect 30 calendar days from his approval. City Council and the Mayor are expected to approve the new ordinance later this month. Additional updates will be provided at that time.

We strongly encourage every employer to have their paid sick leave policies reviewed for compliance. If you have questions, concerns, or would like to have your existing policies reviewed for compliance, please call Terry Greene, Ross Poole, or Cassandra Bolten.

The purpose of our Employment Law Update is to inform clients and interested parties of recent developments in employment law. It should not be regarded as a substitute for comprehensive legal advice.