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Q&A: Sheppard Mullin's Fisch on California wage increase impact

By Amanda Becker

(Reuters) - California Governor Jerry Brown has signed a bill to increase the state's minimum wage, which will make it one of the highest in the country, along with an increase in the minimum salary at which workers will be considered exempt from overtime provisions.

California's hourly minimum wage will rise in July 2014 to \$9 from \$8; and in January 2016 to \$10. The minimum salary level for exempt workers will increase to \$37,440 from \$33,280, and then to \$41,600, on the same schedule.

These increases come at a time when raising the minimum wage is under consideration by other states, cities and Washington.

Gregg Fisch, a partner in the labor and employment group at Sheppard Mullin Richter & Hampton, spoke with Reuters about the potential for higher minimum wage levels bringing more wage-and-hour litigation.

His answers have been edited for brevity and clarity.

Reuters: You mentioned in a recent blog post that the new law could have ramifications for employers beyond having to pay higher wages. Can you tell us what they might be?

Fisch: In addition to that every employee now has to make a higher minimum wage, there are a number of different ramifications. The prime example is exemptions. You have to make one-and-a-half to two times the minimum wage to qualify as an exempt employee. Employers might not be thinking of that. They might be thinking, my employees make over the minimum wage, so they're not affected by this law.

So, on June 30, you could have an exempt employee who is paid \$33,280 but on July 2 if you don't increase their salary to at least \$37,440, you have a situation where that employee who was properly classified as exempt is not. Employers need to start thinking ahead to check and see for their lower-level exempt employees, if they're going to increase the salaries for those individuals or no longer have them classify as exempt.

Reuters: Why does it matter whether an employee is exempt or not?

Fisch: A non-exempt employee would be eligible for meal breaks and rest breaks. Normally, an exempt employee can work as many or as few hours as you want. Now, as non-exempt employee, they would be owed potentially significant amounts of overtime at time and a half of their regular rate.

Reuters: You mentioned that this could lead to litigation. What kind?

Fisch: Your typical wage-and-hour class action lawsuits filed by employees who didn't meet the salary test for an exemption and say they should've been paid on a non-exempt hourly basis. Misclassification lawsuits. They had started to slow down in the last few years as the U.S. Supreme Court and the California Supreme Court made it more difficult to certify class actions,

especially in misclassification lawsuits about individualized issues. But the idea of a salary test being met or not met simply based on the new minimum wage is potentially a prime area for class certification because it's a bright-line rule with fewer individualized issues. It's an area that could become ripe for class actions again.

Reuters: Are there any other ramifications that employers might be unaware of?

Fisch: Depending on what kind of job position it is and what kind of industry we're talking about, the new minimum wage standards expand employers' obligation to provide workers with equipment and tools that may be necessary for their jobs. They are required to provide necessary job equipment for employees unless they make two times the minimum wage. So, if an employee is right at the level of two times the new minimum wage, you have to go and purchase equipment and tools for them if you don't increase their salary, which may be more costly than increasing the salary itself.

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