



Navigating you through the various legal employment and business issues that your Company encounters as you journey to business success!

Navigational Beacon

A Simon | Paschal PLLC Publication

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Minimum Wage Increases for 2017

January 1 each year usually means updates to employment laws. More specifically, numerous states increase their state minimum wage requirement. Some states have established this increase to occur automatically via a pre-established increase while others vote annually whether or not to raise the state minimum. To further complicate compliance issues for employers, some states do not require the increase until some later date after January 1. As such, it is important to continually monitor state legislation to ensure you are in compliance in each state in which you have employees.

Nineteen states increased their state minimum wage in 2017. All but two of the nineteen states required the increase effective January 1. Maryland and Oregon are scheduled to increase their minimum wage on July 1, 2017. For a full list of the minimum wage for each state, turn to page 3. *(cont'd. on Page 3)*



Want More Info?

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YouTube



Should I Challenge My Ex-Employee's Unemployment Claim?

This is a question we get weekly. Often the question is the result of a lack of understanding regarding how unemployment claims in Texas work and the positives and negatives of a former employee receiving unemployment benefits from the state. The first misconception is that employers are obligated to directly pay the unemployment benefits awarded the former employee.

As a general rule, Texas employers do not pay the benefits, but rather all Texas employers pay an unemployment tax. However, that tax rate is calculated based in part on the amount of unemployment claims an employer has and amounts paid out to an individual employer's former employees. This is known as a charge back. As such, if an employer has very few terminations and unemployment claims against it, the employer's unemployment tax rate is generally very minimal and a rare claim will not greatly impact the tax rate, if at all.

An employer's unemployment tax rate is determined October 1, to be effective January 1 the following year. As such, all employers should have received their tax rate from the TWC near the end of last year. The minimum tax rate for 2017 is 0.59 percent with the maximum at 8.21 percent. Employers pay unemployment tax on the first \$9,000 in wages that each employee earns during the calendar year.

If an employer can reduce its tax rate by minimizing employees who collect unemployment benefits, why would an employer not challenge every unemployment claim? The answer is that a desperate person is much more likely to take desperate action. Allowing a former employee to receive unemployment benefits may provide them enough compensation that they don't make unlawful employment claims or seek advice from a plaintiff's attorney. Another consideration is the time and resources an employer expends to fight a claim versus the possible increase in tax rate.



EEOC and NLRB Chair Appointments

Last week, President Trump appointed EEOC Commissioner Victoria Lipnic as Acting Chair of the EEOC and appointed NLRB Board Member Philip Miscimarra as Acting Chair of the NLRB.

As an EEOC Commissioner, Lipnic served as a member of the EEOC's Select Task Force on the Study of Harassment in the workplace. Prior to her time with the EEOC, Lipnic served as Assistant Secretary of Labor for Employment Standards under President George W. Bush from 2002 through 2009. In that role, she oversaw the Wage and Hour Division of the Department of Labor, the Office of Federal Contract Compliance Programs, the Office of Workers' Compensation Programs and the Office of Labor Management Standards. One notable point of dissension by Lipnic during her time with the EEOC is that she was opposed to the revamped EEO-1 Report, which is now required of employers. Since her appointment is only as Acting Chair, President Trump could choose a different permanent Chair but it is unlikely since Lipnic is the sole Republican Commissioner.

Miscimarra has served as a Member of the NLRB since August 2013. *(cont'd. on Page 4)*



Another great Simon | Paschal client

Client Spotlight

Lucky Pucks, LLC is a Texas-based board game company founded by Dan Corthell. Lucky Pucks is a table board game that is great for all ages and competitive levels. If you're looking for a unique game to put in your workroom, game room, or for tailgating, check out www.lucky-pucks.com for the various table options. In fact, stop by our office and you can see our custom Lucky Pucks table. We had the pleasure of helping prepare Lucky Puck's company formation documents and we are excited to see where this local business grows!



(cont'd from Page 1)

State	Minimum Wage	Notes
Alabama	None	
Alaska	\$9.80	
Arizona	\$10.00	\$10.50 effective 1-1-2018
Arkansas	\$8.50	
California	\$10.50	\$11.00 effective 1-1-2018
Colorado	\$9.30	\$10.20 effective 1-1-2018
Connecticut	\$10.10	
Delaware	\$8.25	
Florida	\$8.10	
Georgia	\$5.15	
Hawaii	\$9.25	\$10.10 effective 1-1-2018
Idaho	\$7.25	
Illinois	\$8.25	
Indiana	\$7.25	
Iowa	\$7.25	
Kansas	\$7.25	
Kentucky	\$7.25	
Louisiana	None	
Maine	\$9.00	\$10.00 effective 1-1-2018
Maryland	\$8.75	\$9.25 effective 7-1-2017
Massachusetts	\$11.00	
Michigan	\$8.90	\$9.25 effective 1-1-2018
Minnesota	\$9.50/\$7.75	Min. wage based on annual sales more or less than \$500,000
Mississippi	None	
Missouri	\$7.70	
Montana	\$8.15/\$4.00	\$4.00 is if less than \$110,000 of annual sales
Nebraska	\$9.00	
Nevada	\$8.25/\$7.25	\$7.25 with health benefits
New Hampshire	None	
New Jersey	\$8.44	
New Mexico	\$7.50	
New York	\$9.70	\$10.40 effective 12-31-2017
North Carolina	\$7.25	
North Dakota	\$7.25	
Ohio	\$8.15/\$7.25	\$7.25 if less than \$299,000 annual sales
Oklahoma	\$7.25/\$2.00	10+ employees or sales over \$100,000 are subject to Federal min. wage
Oregon	\$9.75	\$10.25 effective 7-1-2017
Pennsylvania	\$7.25	
Rhode Island	\$9.60	
South Carolina	None	
South Dakota	\$8.65	
Tennessee	None	
Texas	\$7.25	
Utah	\$7.25	
Vermont	\$10.00	\$10.50 effective 1-1-2018
Virginia	\$7.25	
Washington	\$11.00	\$11.50 effective 1-1-2018
West Virginia	\$8.75	
Wisconsin	\$7.25	
Wyoming	\$5.15	

cont.

(cont'd. from Page 2) He is the only Republican currently serving on the Board. In addition to Miscimarra's appointment, there are two vacant seats on the five-member Board. This means President Trump will be able to fill the vacant seats with Republicans, thus giving the Board a Republican majority. With this majority, the Board likely will revisit many of the recent decisions and actions by the NLRB during the least eight years. Employers can expect less oversight and enforcement actions regarding employee handbooks as well as many other areas the Board oversees. This is even more so because Miscimarra dissented from Board opinions that sought to expand the National Labor Relations Act's definition of protected activity, including in the area of employee handbooks and workplace rules.

One other date to keep an eye on is November 2017 when the term of the NLRB's General Counsel comes to an end and President Trump nominates his successor. At that point, the NLRB could have a Republican majority and a Republican General Counsel.

How to Prove Misconduct in an Unemployment Claim

If you decide to challenge a former employee's unemployment claim, you need to understand the bases for an employee to be denied unemployment. The general reason TWC will deny an unemployment claim is if the employee was terminated for misconduct. There is a misperception about misconduct. As an employer, you probably have an idea of what misconduct is but the TWC has a very specific definition of misconduct. The TWC defines misconduct as a situation where the employee violated some rule, policy or law that the employee had the control or power not to violate and the violation caused some harm to the employer who then terminated the employee as a result of the violation. There are a couple of things to keep in mind.

First, if an employer is going to be successful in defending a claim of unemployment based on misconduct, the employer must have a specific policy (preferably in writing) that addressed the situation for which the employee was terminated. Second, employers should be careful not to "kitchen sink" the termination, i.e. outline anything in history that the employee has ever done wrong, and employers

do not want to utilize a compilation of things the employee did wrong. The TWC will not consider that misconduct. The TWC wants one specific incident that led to the termination. Employers also want to make sure they understand and avoid outlining in documentation that the employee was never able to do the specific item in question. Remember, employers must show that the employee had the ability and power not to violate the rule but violated it anyway. So, an employer cannot say the employee was never able to do it or the employer will lose on the unemployment claim. Keep in mind that the TWC is going to look for prior discipline for the employee at issue. Employers are better off if the discipline is in writing but if it is verbal, you will want the person that gave the discipline to be available for the appeal hearing.

In summary, if you can show that (1) there was a specific rule or policy in place, (2) the employee was aware of the rule or policy, (3) the employee previously had been able to comply with the rule but on this specific occasion was unable to, and (4) the employee was disciplined for failure to comply, you will be much more likely to succeed on a claim of unemployment based on misconduct.

TIP: TWC Precedent Manual

One of the most effective ways to establish misconduct is to point to a previous TWC decision. The TWC provides examples of common factual employment issues and how those issues may or may not establish misconduct. The TWC's Unemployment Benefits Appeals Policy and Precedent Manual can be found here:

<http://www.twc.state.tx.us/unemployment-benefits-appeals-policy-precedent-manual>.



Simon | Paschal PLLC Happenings

Today's CPA magazine published Dustin's article "The Fair Labor Standards Act's One-Two Punch" in its Jan/Feb 2017 publication. The publication's audience reaches about 35,000 Texas CPAs, primarily practitioners. Pick up a copy at news stands today!

On March 29, Dustin and Paul will be presenting at the 2017 Frisco Chamber of Commerce HR Summit. Dustin and Paul will present on the issue of sensitive employee relations. Every employer has had to address sensitive issues and have that uncomfortable conversation. Come learn some tips on what you can and cannot say and how to have those difficult conversations. You can register at <http://external.friscochamber.com/events/2017-Frisco-Chamber-of-Commerce-HR-Summit-4708/details>.

The small print: The contents of this newsletter are not intended to provide specific legal advice and you should not take any action based on the content of this newsletter without seeking legal counsel. If you have specific questions, please contact a lawyer, preferably us!

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