



Mid America Cooperative Council

MACC VOICE

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2017 Employment Law Changes



The 2017 Employment Law Changes were an important topic at our **2016 CFO/Controller Conference**. We realize that these changes are in the process of being implemented, and that each state may implement and enforce them differently. **Bob Manning of CHS, Inc. (a sponsor of the conference) and Mark Young, an attorney with myHRcounsel;** helped to shed light on this important subject. We thank CHS, Inc. for sponsoring this important conference. If you would like further information regarding the employment law changes, please visit <http://www.myhrcounsel.com/>.

The following are excerpts of the key points of this important discussion:

Minimum Wage

Five states had minimum wage initiatives on ballot, and four of them passed.

1. Arizona - Arizona voted to pass legislation which raises the state minimum wage to \$12 per hour by 2020 and also guarantees paid sick leave for workers.
2. Colorado - Colorado voters have passed Amendment 70, which will increase minimum wage to \$9.30 per hour in 2017 and an additional 90 cents each year until 2020, where minimum wage will be \$12 per hour.
3. Maine - Maine voters said yes to Question 4, which will increase the minimum wage to \$12 per hour by 2020, then after adjusting the minimum wage with fluctuations in the consumer price index.
4. South Dakota - In South Dakota, voters rejected Referred Law 20. This measure would have provided that the youth minimum wage was not pegged to inflation
5. Washington - Washington voters passed Initiative which will raise minimum wage from the current \$9.47 per hour to \$13.50 per hour by 2020. This measure also mandates employers to offer paid sick leave.

Paid Maternity Leave

For the first time in U.S. history, both major-party candidates have put forward paid maternity leave policies. Currently, the U.S. is the only western country in the world that does not require paid leave for mothers or fathers of newly born infants. In comparison, the United Kingdom, France and Canada all provide at least 14 weeks of paid leave for fathers and from 26-51.9 weeks for mothers. In Germany, fathers are guaranteed at least 14 weeks of paid leave, and mothers are guaranteed at least 52 weeks of paid leave.

Currently in the U.S., the Family and Medical Leave Act of 1993 (FMLA), eligible employees (must work for company with more than 50 employees, or a public agency, or a public/private elementary or secondary school to qualify) are entitled to 12 workweeks of leave in a 12-month period for:

1. The birth of a child and to care for the newborn child within one year of birth;
2. The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement.

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While both candidates have proposed paid maternity leave, both have different views for the paid leave. The proposals from both candidates suggest that the United States may finally catch up with the rest of the developed world to require paid family leave.

Final Rule - Overtime

This long-awaited update will result in a meaningful boost to many workers' wallets, and will go a long way toward realizing President Obama's commitment to ensuring every worker is compensated fairly for their hard work. The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. Specifically, the Final Rule:

1. Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South (\$913 per week; \$47,476 annually for a full-year worker);
2. Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally (\$134,004); and
3. Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.

Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level. The effective date of the final rule is December 1, 2016.

Critically Thinking About the Use of Non-Competes

Do you use non-compete agreements in your business? If so, it is now time that you reconsider which employees you require to sign them with, and why. As it relates to your business, if you make everyone sign a non-compete when they start, you should analyze if that is really necessary. First, non-competes can be expensive to draft. Further, the laws non-competes are based on are subject to change, so you need to ensure that your form is up to date to make it enforceable.

Finally, if there is a dispute over the enforceability of the non-compete, they are even more costly to litigate. Try to perform a cost-benefit analysis of whether you want to spend tens of thousands of dollars litigating over a low-level employee who left you to work somewhere else.

Travel Time and Overtime Wages

The new overtime rule under the Fair Labor Standards Act (FLSA) was set to into effect on December 1, 2016. However, on November 22, 2016, a federal judge issued a preliminary injunction that blocked the rule from being implemented. That decision may be appealed or overturned. Or a scaled-back version of the rule may be put in place next year under the new administration. If the current version of the rule does go into effect, a number of employers will be converting currently exempt employees to nonexempt, because those employees won't meet the required salary threshold under the new rule. Those nonexempt employees will have to begin tracking and recording their work hours. They will also need to be paid overtime. As a result, employers have questions regarding payment of travel time for newly nonexempt employees.

Rod's Thoughts



Thanksgiving is a truly an American tradition. There is something authentic about this holiday that causes me to consider my gratitude to live in this free land, and to serve our cooperative community.

I am grateful for all the successful cooperative businesses that meet their members' unique needs daily! An example is the Crop Specialist of our ag supply cooperative that not only checks on field conditions of its members during the growing season, but plans grid soil sampling systems to optimize fertility levels of its farmers.

I am grateful that our cooperatives are owned by their members! Our milk, fruit and sugar marketing and processing cooperatives have significant investments in their cooperatives, to insure they have a market for their food products. Even during times of low prices, these member/owners keep their investment strong so the cooperative is a reliable supplier in the marketplace.

I am grateful that our cooperatives are controlled by their member/owners! Our health care laundry cooperatives provide reliable linen cleaning services for the health care institutions that own them. They are able to segregate traditional laundry services and specialized sterile laundry services that form the foundation of health care services. Our health care laundry has tailored their delivery cart services to meet each health care institution's unique needs.

I am grateful that our credit union and financial services cooperatives control their own destiny. Many financial institutions are trying to build trust with their customers, while our credit unions convey to their member/owners that they can control their own destiny by electing their director representative on a democratic basis. They have proven that the best control is in the hands of many.

Our rural electric cooperatives provide sustainable electricity to millions of people in rural America, that otherwise would not have power. This dedication to serving each member no matter how far they live from a local town, has helped to make America great! These member/owners desire to live in rural America with the benefit of electricity and modern communications, provided by their rural electric cooperative.



I am grateful that we have the Farm Credit System, which is celebrating its centennial anniversary. They provide financial services and liquidity to rural America with consistent support, not often seen in other financial markets. They have taught their members that it is better to have a strong financial base that is user-owned.

If there are profits that are not needed for future growth, then they can be passed back to their owners based on their participation. What a healthy way of growing our great country!

As we move into the winter months and the holiday season, let's take this time to be grateful for our cooperative heritage!

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