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Beyond Brewing

Business Basics Bulletin Newsletter

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Minimum Wage, Maximum Headache: Dealing with New Employment Laws in California

By **Katie Spero**

Minimum wage has been a big employment topic in 2016, with changes in federal, state, and local laws all impacting how employees are being paid in California. In addition, several localities have also expanded paid sick leave, requiring employers to make changes to paid time off policies. This article will help you navigate the increasingly complex rules impacting California employers.

Employee Classification

The minimum wage paid to the employee will start with determining the employment classification for the individual. The federal government generally classifies employees into two categories: non-exempt (where employees are typically paid on an hourly basis, with entitlements to overtime and designated meal and rest breaks) and exempt (where employees are typically

paid on a salary basis and exempt from certain laws, including overtime).

The default classification is non-exempt – employees receive overtime and are provided access to designated meal and rest breaks, unless an exemption applies. Exemptions are defined by law, and cannot be determined by an agreement with the employee to be paid by salary and not be entitled to overtime. Employers carry 100% of the burden and liability when it comes to classification. If you are not classifying your positions correctly, you will run afoul of federal and state laws, and could be subject to a significant and costly penalty.

In order to be classified as an exempt position, the position must pass two tests. The first of those is a Duties Test. Only certain types of positions can be classified as exempt, based on the actual job duties being performed by the specific individual.

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There are several types of exempt categories, but the most common in the craft beer world are the following:

- 1) **White collar exemptions** – These exemptions are for positions that customarily and regularly exercise discretion and independent judgment on matters of significance (i.e., the individual can make independent choices on major decisions without an immediate supervisor) and is primarily engaged in duties which meet the exemption test.
 - a. **Professionals** – These are individuals who are performing work requiring advanced knowledge in a field that typically requires licensing or that requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. This could be an Accountant or a Graphic Designer.
 - b. **Administrative staff** – These are individuals who are completing office or non-manual work related to general business operations, who are regularly assisting a proprietor, executive, or administrative employee OR performing specialized or technical work with only general supervision work OR executing special assignments and tasks with only general supervision. This could be an Office Manager/HR, Marketing Manager, or Events Coordinator.
 - c. **Executive** – These are individuals who manage an enterprise or subdivision of the business; supervise two or more full-time employees; and who have the authority to hire and fire. This could be a Tasting Room Manager or Head Brewer, depending on your reporting structure and the ability of the individual to exercise discretion and independent judgment.
- 2) **Outside sales** – These are individuals who are primarily engaged in making sales or obtaining orders for services, products, or use of facilities, and who spend at least 50% of their time outside of the office. This could be a Sales Manager, depending on his or her work structure and time spend away from your place of business and the nature of the work. For example, making deliveries on goods already sold does not count as sales time, but loading up a vehicle with sample products and informational materials for the purpose of making a sale does.
- 3) **Inside commissioned sales** – These are individuals who are primarily engaged in sales, and who have 50% or more of his or her earnings in the form of commissions. Only individuals who are working for California employers covered by Wage Orders 4 and 7 will qualify.

The second test for exemption is a Salary Test, which we will discuss below. Keep in mind that just agreeing to pay a position a salary does not make the position exempt. The position must be primarily focused on the right duties, and be making a salary at a certain level, to be classified as exempt.

Minimum Wage for Non-Exempt (Hourly) Employees

In April 2016, Governor Jerry Brown signed legislation to raise the statewide minimum wage for non-exempt (hourly) employees to \$15.00 per hour by January 1, 2022. This will be done through a series of incremental wage increases on January 1 of every year, with a one-year delay for business with 25 or fewer employees. Effective January 1, 2017, the statewide minimum wage in California will increase to \$10.50 per hour for businesses with 26 or more employees. If you have 25 or fewer employees, the statewide minimum wage will remain at \$10.00 per hour and will not increase until January 1, 2018.

If you have employees working in a California municipality that has a higher minimum hourly wage, you must pay employees at that higher wage. The following cities have enacted minimum wages that are higher than what is required statewide:

- **Berkeley** – \$11.00 per hour (effective October 1, 2015); will raise to \$12.53 per hour on October 1, 2016
- **El Cerrito** - \$11.60 per hour (effective July 1, 2016)
- **Emeryville** - \$13.00 per hour for employer with 55 or fewer employees or \$14.82 per hour for employers



Summer 2016 Festival Safety

By Dan Drown

This summer season will present us with the opportunity to attend more craft beer festivals and events than ever before. Nice warm weather and refreshing craft beer go very well together, but we have to bring safety to the festival to make sure we really have a good time.

Brewery employees look forward to outdoor beer venues, but secretly (or not so secretly) loathe having to load and haul all the equipment necessary so they can serve their fine beers at the desired temperature and level of carbonation. Make a list and think back to what you wish you have last time. Packing to go to the festival requires ice, kegs, jockey boxes, CO2 bottles, tables, pop-up shade covers, and so on...

And festival safety fits in like this:

- Take care when lifting heavy items and plan to get assistance when loading up the brewery van or truck to drive to the festival... And at the end to pack up for the return and unloading.
- Plan ahead so you don't find yourself trying to rush through traffic to arrive on time.
- Find out ahead of time where you can unload and park so you can minimize the distance that you have to carry your equipment
- Anticipate that you'll have to transport heavy items and bring the appropriate wheeled hauling equipment – two wheeled truck, or borrow the kid's wagon. Keep in mind that pneumatic tires work much better on grass than plastic hard-cast wheels.
- Consider what tools you may need—lots of injuries happen when people improvise tools.
- Expect a hot and/or rainy day and bring a shade or rain cover. Umbrellas and sunscreen are good to have.
- Stay hydrated. It's easy to get caught up in the beer sampling and heat of the day and forget to drink enough water while having more beer than planned. Bring bottled water.
- Bring a folding chair and wear practical & comfortable shoes.
- Bring a first aid kit. You can leave it in the vehicle, but better to have one than not.

Carbon Dioxide (CO2) Safety

- Remove CO2 regulators before transporting bottles and make sure the bottles are secured from movement and rolling. If the valve breaks off, you'll have a rocket launch.
- Make sure you have the tools (adjustable wrench, knife), clamps, extra hose, and fittings you'll need. Bring extra washers for using to reconnect your regulator to the CO2 bottle.
- Do not, EVER, transport CO2 bottles in the passenger compartment or your vehicle. If the bottle leaks or the valve is not completely closed you could fill your vehicle with CO2 and lose consciousness. This can happen very quickly. What happens next is a matter of luck.

And most importantly, have a designated driver for the ride back to the brewery. Best to end the day safely. Do not drive if you have enjoyed too many beers.

See you at the festival!

INSIGHT

for the
Craft Brewer



Researching Your Distribution Options – Part I

In previous issues of B5, the internal brewery preparation necessary for distribution has been discussed, and for the sake of continued discussion, we will assume that these steps have been completed. The next step is to determine the most advantageous place to distribute your beer.

This may be an easy decision in some instances. For example, if you aren't permitted to self-distribute in your state, it would be logical to begin with the area surrounding your brewery. Distribution to your entire state would be the next logical expansion. Be cautious and stay small (a few accounts) in the beginning, and grow as the brewery can handle the increased production load. Distributors will work with you in order for the partnership to be maximally beneficial on both sides.

Once you have expanded to cover your local and state areas, there are several different factors to consider when growing further:

Transportation: How far will you need to ship the beer (or) how much cost will you need to absorb or share to get the orders and keg returns efficiently delivered? If shipping in refrigerated transportation, remember to consider that additional cost. And additionally, can you piggy back transportation from an existing territory to this new one to help with cost efficiency?

Staffing: Is this an area where you already have some connections? How far & how often will you be sending your sales representative to this area (or) bringing that employee to the brewery? Closer to the brewery is certainly more cost

effective.

Lifestyle match: Are your products going to be welcomed into this community? Does your brand resonate with their lifestyle? As an extreme example, if your portfolio were comprised solely of higher alcohol big flavors like porters and stouts, it would not seem logical to distribute to hot, tropical areas where the desired beverage is lighter in taste, lower in alcohol, and more refreshing than heavily flavored.

Expansion capability: Consider how much/how fast you would like to grow. If you would like to grow in a slower, steady manner then a large, urban area might not be ideal. If very successful, a big city (Chicago, LA, etc.) could skyrocket sales too quickly, leaving you unable to brew & package quickly enough to keep up with demand. Further, in larger states or states that include larger urban areas, consider beginning with a smaller territory and expanding into more of the state when you have successfully grown that smaller area.

Franchise laws: Never forget that state laws can make it nearly impossible to get out of a distribution agreement that isn't working well. It may be wise to avoid these states until you have a successful distributor selection strategy and are confident with your contracts and distribution management in more forgiving areas. (See other Craft Beer Attorney articles and webinars with regard to franchise laws.)

Although not as common as expanding into adjacent territories and states, many breweries choose

to distribute in areas where they have solid community connections – usually family, close friends, or their school alma mater – in order to ensure support and growth. In the case of a very small brewing operation, this can cut down travel expenses when someone from the brewery is spending time in the territory and serve as a visit to friends and family at the same time.

On a practical note, you will need to be visiting the new area extensively to research distributors and set up your new territory, so make a trip with distribution in mind to see how that area feels. Visit area restaurants, bars & liquor stores and look around carefully. Speak with fellow brewers about this area and get their thoughts and reflections. If there are chronic challenges to working in this area, you are likely to unearth them by paying close attention and listening to others' stories and suggestions. When horror stories are shared, be wise and focus your distribution interest elsewhere. If a challenge exists for many, there is no need to follow suit. Choose other areas, states or regions first that appear to be less problematic.

Once you have selected a state or territory for expansion, your research will narrow to the options for distribution in that specific area.

For tips and tricks with regard to this search for the optimal distribution partner, look for the next B5 column: Researching Your Distribution Options – Part II.

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Upcoming Craft Beer Events

CBA Webinar Series

Employment Terminations: Avoiding Pitfalls

Thursday, August 25, 2016
10am

Join Katie Spero, Esq. of The Craft Beer Attorney to learn the best and legal way to handle employment terminations for your craft brewery. This webinar will focus on common issues with termination of employees in California.

Topics will include:

- Discipline and making the decision to terminate
- Termination documentation
- Best Practices for termination
- The Hows and Whys of Severance Agreements
- Addressing unemployment claims
- Avoiding discrimination claims
- Retention guidelines

Understanding Brewery Insurance

Thursday, September 22, 2016
10am

John Hoeffler of The Brewery Insurance program, will discuss the various parts of insurance needed and the types of coverage you should ask about when it comes to getting a policy for your brewery.

Check out all our
events at

[craftbeerattorney.com/
upcoming-events](http://craftbeerattorney.com/upcoming-events)

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Minimum Wage, Maximum Headache, Cont'd

- **Long Beach** - \$10.50 per hour for employers with 26 or more employees (effective January 1, 2017) (please note that the Long Beach minimum wage increase was enacted before the statewide law, which raises the minimum wage in a slightly different incremental increase. The City Council may revisit this law in the future).
- **Los Angeles (City and Unincorporated County)** - \$10.50 per hour for employers with 26 or more employees (effective July 1, 2016)
- **Mountain View** - \$11.00 per hour (effective January 1, 2016); will raise to \$13.00 per hour on January 1, 2017
- **Oakland** - \$12.55 (effective January 1, 2016)); wage will increase every January based on the Consumer Price Index, and be announced in advance of the increase
- **Palo Alto** - \$11.00 per hour (effective January 1, 2016); wage will increase every January based on the Consumer Price Index, and be announced in advance of the increase
- **Pasadena** - \$10.50 per hour for employers with 26 or more employees (effective July 1, 2016)
- **Richmond** - \$11.52 per hour (effective January 1, 2016); will increase to \$12.30 per hour on January 1, 2017
- **Sacramento** - \$10.50 per hour for employers with 101 or more employees (effective January 1, 2017)
- **San Diego** - \$10.50 per hour (effective date to be determined; likely mid-July 2016)
- **San Francisco** - \$13.00 per hour (effective July 1, 2016)
- **San Jose** - \$10.30 per hour (effective January 1, 2016); wage will increase every January based on the Consumer Price Index, and be announced in advance of the increase
- **Santa Clara** - \$11.00 per hour (effective January 1, 2016);); wage will increase every January based on the Consumer Price Index, and be announced in advance of the increase
- **Santa Monica** - \$10.50 per hour for employers with 26 or more employees (effective July 1, 2016)
- **Sunnyvale** - \$11.00 per hour (effective July 1, 2016)

If you are in a city with a higher minimum wage, you are required to post information on that higher wage with your other wage and hour postings. These postings must be in English – other languages may also be required based on the specific local ordinance and the composition of your workforce. You can obtain the required postings free of charge from each city's main government website.

Minimum Wage, Maximum Headache, Cont'd

Minimum Wage for Exempt (Salary) Employees

In May 2016, the federal Department of Labor adjusted the minimum salary required for white collar exemptions. Effective on December 1, 2016, white collar exemptions must make a minimum of \$47,476.00 per year to be considered exempt. This minimum salary must be paid even if the Duties Test is satisfied in order for the individual to be exempt from overtime payments.

California law also requires that white collar exemptions be paid at a rate that is at least two times the statewide minimum wage, so the minimum annual salary required under the Salary Test will increase every January 1 as the statewide hourly minimum wage is increased. The minimum federal salary due is larger than the minimum California salary due for the time being. However, as of January 1, 2019, white collar exempt individuals must be paid a minimum of \$49,920 per year to remain exempt from overtime obligations.

Inside sales commission roles were not impacted by the federal law changes in May 2016, but will be impacted by the annual statewide minimum wage increases. To remain exempt from overtime, the inside sales commission individual must make an hourly salary that is 1.5 times the statewide minimum wage, with 50% of that hourly wage coming in the form of commissions.

Minimum exempt salary amounts are only impacted by federal and state minimum wage laws. Higher hourly wages required by local law do not result in higher annual salaries for exempt employees.

New Paid Sick Leave Laws

Several cities in California have also enacted expanded paid sick leave obligations, beyond the 3 days (24 hours) of paid sick leave required statewide. These local laws not only expand the number of paid sick hours that can be accrued and used, but also change accrual/lump sum allocation methods and expand the uses of the paid sick leave. If you are in one of the cities below, you will need to examine the specific ordinance to determine the details of how your paid sick leave program will need to be administered:

- **Emeryville** – 48 hours of annual paid sick leave if 55 or fewer employees within city limits or 72 hours of paid sick leave if 56 or more employees within city limits (effective July 1, 2015)
- **Los Angeles (City)** – 48 hours of annual paid sick leave (effective July 1, 2016)
- **Oakland** – 40 hours of annual paid sick leave if 10 or fewer employees or 72 hours of paid sick leave if 11 or more employees (effective March 2, 2015)
- **San Diego** – 40 hours of annual paid sick leave (effective date to be determined; likely mid-July 2016)
- **San Francisco** – 40 hours of annual paid sick leave if 10 or fewer employees or 72 hours of paid sick leave if 11 or more employees (effective February 5, 2007)
- **Santa Monica** – 40 hours of annual paid sick leave if 25 or fewer employees or 72 hours of paid sick leave if 26 or more employees (effective July 1, 2016)

These apply to all employees, regardless of non-exempt or exempt status.

To ensure you are protected, consult an attorney that understands these new law updates and have them do a review of your current employment practices.