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California Links

State Senate

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$34.9 Million Awarded Statewide to Fight Workers' Compensation Fraud

Insurance Commissioner Dave Jones announced that he has awarded $34.9 million in grants to 37 district attorney offices representing 44 counties across California to combat workers' compensation insurance fraud. The grants, funded through employer assessments, support law enforcement efforts in investigating and prosecuting workers' compensation insurance fraud.

"Ultimately California consumers and businesses pay the price for insurance fraud through higher premiums and increased costs for good and services," said Commissioner Jones. "These grants will assist district attorneys across the state in uncovering workers' compensation fraud schemes and prosecuting those who take advantage of the system."

Workers' compensation insurance fraud includes medical provider fraud, employer premium fraud, employer defrauding employee, insider fraud, claimant fraud, and the willfully uninsured operating in the underground economy. These cases, when successfully prosecuted, help level the playing field for honest businesses and discourage future fraudulent activity.

States Seek Emergency Stop to Federal Overtime Rule

A group of states (Alabama, Arizona, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, Nevada, New Mexico, Ohio, Oklahoma, South Carolina, Texas, Utah and Wisconsin) are seeking to halt the Department of Labor's (DOL) federal overtime rule sought an emergency injunction asking a federal court to stop the rule before its December 1, 2016 effective date.

The federal overtime rule changes the salary level that must be met before an executive, professional or administrative employee can be exempt from overtime. The minimum federal salary test for these exemptions will increase to $913 per week ($47,476 annually for a full-time employee) — an employee paid less than this threshold amount will be guaranteed overtime pay.

These states have joined forces and filed a lawsuit in the U.S. District Court in Eastern Texas. A lawsuit also was filed by more than 50 business groups who are challenging the

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rule, including the U.S. Chamber of Commerce, National Association of Manufacturers and National Federation of Independent Businesses.

The states claim that the DOL overstepped its authority in enacting the rule, arguing that the DOL's justifications are not a permissible construction of the federal Fair Labor Standards Act. They also claim that the rule burdens both the private and public sector by straining budgets and forcing layoffs or reductions in work hours. In addition, the states are also challenging the automatic indexing mechanism that would increase the federal salary test every three years.

The business group lawsuit argues that, by setting an excessively high salary threshold for determining who qualifies as "executive, administrative and professional employees," the rule departs from the intent established by Congress in the Fair Labor Standards Act and consistently administered by the DOL for more than 75 years. The suit claims that the result of the new rule is that the exemption is "effectively lost for entire categories of salaried executive, administrative, professional, and computer employees whose job duties qualify them to be treated as exempt."

The new federal salary test is more than double the current federal test and is also higher than California's minimum salary test. California employers will need to follow the federal salary test as well as California's strict duties test when classifying these employees. And until there is a court ruling stopping enforcement, the federal overtime rules will take effect on December 1, 2016.

Critiques of State Workers' Compensation Systems

The U.S. Department of Labor (DOL) produced a report, entitled: "Does the Workers' Compensation System Fulfill its Obligations to Injured Workers?" The report calls for a significant change in approach to workers' compensation including a need "to identify best practices in order to provide better benefits to injured workers, increase the likelihood that workers with occupational injuries or illnesses can access the wage replacement benefits they need until they can go back to work, and reduce costs to employers."

In 1970, Congress created the National Commission on State Workmen's Compensation Laws to comprehensively study and evaluate the state workers' compensation laws and determine if the laws provide an adequate, prompt and equitable system of compensation. The Commission agreed on five basic objectives: broad coverage of employees and work-related injuries and diseases; substantial protection against interruption of income; provision of sufficient medical care and rehabilitation services; encouragement of safety; and an effective system for delivery of the benefits and services. Using these objectives, the Commission concluded that "the protection furnished by workmen's compensation to American workers presently is, in general, inadequate and inequitable." The Commission then endorsed 84 recommendations, with 19 of those being deemed as "essential." With a fear that Congress might act to secure compliance, many states started compliance with a number of the 19 essential recommendations. By 2015, seven states follow at least 15 of the recommendations and four states comply with less than half, with the remainder of the states in the middle of those two extremes. This new report poses the question of whether a new National Commission should be convened to establish standards that would trigger increased federal oversight if state programs fail to meet those standards.

The report also calls for additional research on the ways to improve the functioning of workers' compensation systems and on the experience of injured workers. The report states that "An expanded research agenda focusing on the impact of aspects of the workers' compensation system on workers and families, and on evidence-based approaches to improving the functions of the compensation systems, would be beneficial."

At the same time, the Oregon State Department of Consumer and Business Services published the biennial Workers' Compensation Premium Rate Summary. This summary endeavors to put all state systems on a comparable basis and analyzes classifications that are based on share of losses in Oregon, showing an Oregon employer what it would pay in each state.

According to the summary, California continues to have the highest premium rates. It does show, though, that California premium rates are declining since 2014. The summary states that, in California, the average rate per $100 of payroll is $3.24, effective in January of 2016. The actual rate per $100 of payroll, as approved by Insurance Commissioner Dave Jones, is $2.42. And, the Workers' Compensation Insurance Rating Bureau has recently requested approval of a pure premium rate of $2.26 per $100 of payroll.

The RAND Corporation has also produced the report, "Benefits and Earnings Losses for Permanently Disabled Workers in California – Trends through the Great Recession and Effects of Recent Reforms." According to the RAND Report, the benefit adjustments in SB 863 (de Leon) produced a higher level of wage replacement for injured workers than the law as it existed prior to the changes in the permanent disability benefit enacted in 2012 over the same period of time. The Report also indicated the possible use of the age and occupational modifiers as a vehicle to arrive at greater equity in permanent disability benefits.

The RAND Report stated: "While it is reassuring that eliminating the FEC did not increase inequities across impairments, the reforms also did nothing to address them. In future reform efforts, California may wish to focus on other elements of the rating system, such as the age and occupation modifiers."

These reports remind us that, even with the Legislature out on a recess, there are always reports, talks, and summaries being performed regarding workers' compensation with reforms and advisory recommendations being proposed. These proposed reforms or advisory recommendations could shape what the Legislature decides to do in the next legislative session regarding workers' compensation in California.

Voter Registration in California Rising

With the deadline for voter registration in California rapidly approaching, data released by the Secretary of State's office shows that a sharp surge in registrations has pushed California to a record number of voters. Even in September, a full month before the end of the registration period, California marked 18.2 million registered voters, an increase of 1 million since the same time of year in 2012 with 370,000 alone coming in the last week of September. This number means that California currently has more people registered to vote than live in 46 other states.

While it is widely known that Democrats outnumber Republicans in the state, the data shows that Democrats have an 18% lead in voter registration over Republicans, with 45.2% of the electorate compared to 26.8%. Voters who declined to select a political party preference came in a close third at 23.4%.

This growth in voter registration has also resulted in a shift in the demographic makeup of the California electorate. Uncertainty surrounding the presidential election have driven large numbers of first-time Latino voters to register, with many of them even pursuing citizenship so that they can vote in the November elections. Latino voters comprise 31% of the state's newly-registered voters, which demonstrates that they are registering at a higher rate than other ethnic groups.

The deadline for voter registration for the November election is October 24th.