FIND YOUR WAY

Navigate New Labor Regulations for 2022

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7 Navigate the Labor Law Maze
2021 brought California wildfires, extreme weather, COVID-19 and, of course, bills—more than 330—introduced in the last legislative session with the word “employer.” But have no fear, our expert is here with his annual rundown of the new employment laws and how you can remain in compliance.

18 The R Words
Recruitment and retention: two words that build better practices. We interview a few member firms about their efforts in these areas in the hopes we can show you some new things to consider when planning your own firm’s success.

20 FTB Q&A
The annual meeting between the FTB and CalCPA’s Committee on Taxation took place virtually this year, addressing the committee’s concerns of processing delays due to COVID-19 and the new pass-through entity tax.

21 Here Comes Virtual Currency
With more and more retail investors dipping their toes in the volatile waters of virtual currency, it’s more than likely CPAs will have to deal with the tax implications, and beyond, come tax season. Get a crash course on what to expect and how to handle it.

23 Making a Leader
The latest installment of the diversity, equity and inclusion (DE&I) series brainstorms how to address DE&I issues while attracting people for leadership positions.

... An exemption to the ABC test still requires satisfaction of ‘control’ and other well-known factors described in Borello.”
it seems more managers are open to the idea of their employees setting their own hours—including working less than eight hours a day—so long as the work gets done. But while possibly enjoying that freedom, a survey of workers found:

72% say they need at least 8 hours a day to get their job done.

48% never disconnect from work during business hours and feel obligated to respond to messages and requests immediately, even during breaks.

43% report attending more video calls now than six months ago, with 34% of them saying more than one-third of their time spent in these meetings.

—Robert Half

"Taxpayers and tax professionals are the first line of defense against scammers looking for refunds. We are entering a sensitive tax period, and we urge people to protect their personal information—and avoid problems at tax time."

—IRS Commissioner Charles Rettig
Due to the lingering COVID-19 pandemic and the resulting county restrictions, our traditional CPA Day and in-person meetings with legislators are again being held virtually. Taking place between Jan. 24–Feb. 4, CPA Day will be changed to CPA Week for 2022. While the name has changed for this year, our objectives are the same: facilitate relationships with policy leaders and support a robust grassroots network that can be leveraged to advance the public policy objectives of the profession.

These relationships are the foundation to CalCPA’s advocacy efforts and help set the tone for the year ahead. This is particularly important as we enter a gubernatorial election year.

While not as ideal as an in-person meeting, virtual meetings allow for increased opportunities for member participation and scheduling with busy elected officials. Whether it be in-person or virtual, our members continually step up to ensure that legislators are aware of the issues facing the profession and that their local CPAs are willing and able to be used as subject-matter experts.

If you are interested in participating, it’s not too late to sign up! Please reach out to your chapter program manager (calcpa.org/chapters), who can provide you with more information. And stay tuned to CalCPA communications for additional information and opportunities to become involved with CalCPA’s grassroots events.

According to a new survey by Grant Thornton LLP, 57 percent of CFOs have made it a priority to invest in environmental, social and governance (ESG) efforts since the start of 2020, with 23 percent saying that ESG investments are much more important for their organizations than they were prior to 2020.

According to the 2021 Q3 CFO Survey, while some companies are waiting for the SEC to provide its anticipated disclosure regulations for ESG matters, many companies are looking beyond just compliance—17 percent of CFOs see ESG as a fundamental driver of financial success and an additional 69 percent say that ESG is either a top consideration or equally as important as financial success. Just 14 percent believe that ESG is a minor consideration or that financial results are the only thing that matters.

Find out more at grantthornton.com/Insights/CFO-insights.aspx.

**Survey:** Majority of CFOs Prioritizing ESG Investment

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Consider the following step-by-step approach when incorporating mediation and arbitration as part of your risk management:

- **Mediation for all disputes**: Our CAMICO claims experience has shown that mediation is often an effective tool in many professional liability disputes and engagements. It may lead to quicker resolutions of small matters and is often a productive tool in furthering settlement efforts in large claims. CAMICO therefore recommends mediation for all disputes and engagements.

- **Binding arbitration for fee disputes only**: Our claims experience indicates that binding arbitration is often beneficial to CPAs in successfully resolving disputes over fees, but it is not advantageous (and often disadvantageous) to CPAs in high-dollar, complex accounting professional liability disputes, particularly attest engagements involving banks and other third parties. Why? Because the best defenses (lack of reliance, lack of causation) available to CPAs often require extensive discovery which is usually limited in arbitration. Consequently, CAMICO has found that binding arbitration for all disputes often exposes firms to substantially greater risk. Best practice is to **not** give up your ability to litigate disputes that could be significant in nature and to limit the firm’s use of binding arbitration to fee disputes only.

- **Establish an understanding with the client regarding how disputes will be handled**: Addressing this topic on a pre-dispute basis is a proactive step toward open dialogue. Document the terms of a pre-dispute agreement in your engagement letter. In some states, ADR is only effective if stipulated as part of an engagement letter or a separate contract signed by the client.

- **Don’t assume that conflicts will never happen to you**: Unfortunately, conflicts are inevitable at some point in our professional career. Coping with the dynamics of our changing profession requires a proactive approach of establishing processes to deal with such conflicts and to avoid the possible expectation gaps in our business relationships. The goal of the above step-by-step approach is to encourage a collaborative resolution to disputes. You should consult with your legal counsel, as appropriate, the applicability of ADR in your state as well as the proper legal language.

For more, visit camico.com.

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Announcements
The CBA named Michael Savoy president and Katrina Salazar secretary/treasurer … BPM named Meredith Johnson, Kemp Moyer, Ryan Musser, Javier Salinas, Will Tanem and Catherine Wong partners … EisnerAmper named Paul Kangail tax director.

Accomplishments
Accounting Today named David Cieslak, Charles Rettig, Ric Rosario and Geni Whitehouse among its Top 100 Most Influential People in Accounting and named CalCPA President and CEO Denise Froemming among its Ones to Watch.

Members in the News
CNBC quoted Mary Kay Foss in a Nov. 17 article on how muni bond interest can trigger Medicare premium hikes … Blake Christian authored a Nov. 18 article in The Tax Advisor on investors shielding crypto gains in opportunity zones … Tax Notes quoted Mary Kay Foss in a Nov. 22 article on the IRS’s new estate tax return retention policy … NerdWallet quoted Leonard Wright in a Nov. 22 article about times you need money advice from a human … The Nov. 30 Wickenburg Sun published an article by Edward Pierini Jr. on estate and financial planning for Baby Boomers … CNBC quoted John Schultz in a Dec. 2 article on capital gains of home sales … Financial Advisor quoted Mary Kay Foss in a Dec. 6 article on how clients can gift and protect assets at the same time … Financial Management quoted Blake Christian in a Dec. 7 article on tax breaks for investors in startups … CNN quoted Mary Kay Foss in a Dec. 13 article on backdoor Roth IRAs.

Tax Season Toolkit Correction
The Federal Toolkit in the December 2021 issue of California CPA, at Page 14, states that the 2021 Consolidated Appropriations Act (CAA) (P.L. 116-260, enacted Dec. 27, 2020) extended the employer credit for paid sick and family leave to March 31, 2021. However, this credit was further extended to Dec. 31, 2025. See IRC Sec. 45S(i), as amended by the 2020 Taxpayer Certainty and Disaster Tax Relief Act (part of the CAA, at Sec. 119(a), Div. EE).

Also, the discussion of the 2021 American Rescue Plan Act, Page 14, listed the 2021 changes to the earned income credit on Page 16, but did not mention that the maximum age 65 limitation to claim this credit was eliminated for 2021.

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NEW CALIFORNIA EMPLOYMENT LAWS FOR 2022
What Employers Need to Know to Navigate the Regulatory Maze

BY MARK E. TERMAN, Esq.
COVID-19 & Workplace Safety

COVID-19 Exposure Notification

Effective Oct. 5, 2021, AB 654 amends existing law (AB 685 enacted the prior year; see Page 7, January/February 2021 California CPA, “Employer Beware”) to parallel provisions of Cal-OSHA’s COVID-19 Emergency Temporary Standard (dir.ca.gov/dosh/coronavirus/ETS.html) about employer-required notices of COVID-19 exposures (based on close contact with an infected individual) and outbreaks. AB 654 lists individuals and entities who must be notified, including all employees, and the employers of subcontracted employees, who were on the premises at the same worksite. This bill changes prior law that required notice to, “employees who may have been exposed.” AB 654 also expands categories of employers who are exempt from the public health agency reporting requirements to include various licensed entities such as community clinics, adult day health centers, community care facilities and child day care facilities.

This bill amends Labor Code Sec. 6409.6.
Enterprise-wide and Egregious Health & Safety Violations

SB 606 expands Cal-OSHA’s enforcement tools by establishing new levels of workplace health and safety violations: “enterprise-wide” and “egregious” violations. If an employer has multiple worksites, the bill provides that there is a rebuttable presumption that a violation is enterprise-wide if the employer has a written policy or procedure that violates workplace health and safety laws, or Cal-OSHA “has evidence of a pattern or practice of the same violation … committed by that employer involving more than one of the employer’s worksites.” Thereafter, if the employer fails to rebut the presumption of an “enterprise-wide” violation, Cal-OSHA may issue an enterprise-wide citation requiring enterprise-wide abatement.

The bill empowers Cal-OSHA upon inspection or investigation to issue a citation deeming a workplace health and safety violation “egregious” where, among other reasons, the employer: “Intentionally … made no reasonable effort to eliminate the known violation;” committed willful violations that “resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses;” or committed willful violations resulting in “persistently high rates of worker injuries or illnesses."

Subject to narrow exceptions, “each instance of an employee exposed to [an egregious] violation shall be considered a separate violation for the purposes of the issuance of fines and penalties.” SB 606 adds “enterprise-wide violation” to the list of willful or repeated violation of any occupational safety or health standard or order, and certain other violations upon which a civil penalty may be assessed of not more than $124,709 for each violation, but in no case less than $8,908 for each willful violation.

This bill amends secs. 6317, 6323, 6324, 6429, and 6602 of the Labor Code, and adds secs. 6317.8 and 6317.9.

WAGE & HOUR, WORKER CLASSIFICATION & WORKING CONDITIONS

Employee Production Quotas in Warehouse Distribution Centers

Citing the rapid growth of just-in-time logistics and of next-day consumer package deliveries—and the belief that production quotas imposed on non-exempt warehouse distribution center employees fulfilling that supply chain incentivize non-compliance with workplace safety rules, increase meal and rest break violations, and nullify minimum wage increases—the Legislature enacted AB 701 to regulate the use of production quotas in warehouse distribution centers.

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For purposes of AB 701, a “warehouse distribution center” is a business establishment operating under any of these North American Industry Classification System (NAICS) codes: 493110: General Warehousing and Storage; 423: Merchant Wholesalers, Durable Goods; 424: Merchant Wholesalers, Nondurable Goods; and 454110: Electronic Shopping and Mail-Order Houses (Notable is that NAICS code 493130: Farm Product Warehousing and Storage is not regulated by AB 701).

Of employers in the four NAICS codes, AB 701 regulates those who directly or indirectly, or through an agent (including the services of a third-party employer, temporary service or staffing agency), employ or exercise control over the wages, hours or working conditions of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in California.

All employees of an employer’s commonly controlled group (as the term is defined in Sec. 25105 of the Revenue and Taxation Code) are counted in determining the total employees.

The bill defines a “quota” as, “a work standard under which an employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard.”

AB 701 provides that employees are not required to meet quota that prevents legally required meal and rest periods, use of and travelling to and from the bathroom, and compliance with California occupational health and safety laws.

The time employees spend complying with occupational health and safety laws must be considered as “on task” and productive for purposes of any quota, though meal and rest breaks are not considered productive time unless employees must remain on call. The bill prohibits adverse employment action by employer against an employee for failure to meet a quota due to any of the foregoing reasons, or where the quota was not disclosed as required by the bill.

Written disclosure of each quota to which the employee is subject must be given to the employee at the time of hire or within 30 days of the Jan. 1 effective date of this bill. It must describe the quantified number of tasks to be performed or materials to be produced or handled, the defined period to complete quota, and any potential adverse action that could result from failure to meet quota.

If a current or former employees believes that compliance with a quota violated their right to meal or rest periods or many labor code provisions already carry misdemeanor classification, and criminal prosecutions have been quite rare, but grand theft could be prosecuted (if at all) as a felony.

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occupational health and safety law, he or she can orally or in writing request a written description of each quota that applies to them and their personal work speed data the most recent 90-day work period of the employee. Employers must provide this information no later than 21 calendar days from the date of the request. Former employees may only make one such request. The law does not limit the number of requests current employees can make.

The new law creates a rebuttable presumption of unlawful retaliation if an employer discriminates, retaliates or takes adverse action against an employee who, in the previous 90 days, has requested for the first time in the calendar year their quota or personal work speed data, or complained to their employer or government agencies about an alleged violation of AB 701.

Current and former employees may bring an action for injunctive relief for any alleged violations of AB 701, may recover costs and attorneys’ fees if they prevail, and may also pursue a Private Attorneys General Act (PAGA; Labor Code Sec. 2698, et seq.) action, though employers have the right to cure alleged violations (per under Sec. 2699.3) before PAGA lawsuit is filed.

This bill amends Labor Code Sec. 138.7 and adds secs. 2100 to 2112.

Wage Theft Crimes
AB 1003 makes the intentional theft of wages by an employer punishable as grand theft if the wages equal more than $950 for one employee or $2,350 for two or more employees in any consecutive 12-month timeframe.

Wages subject to this section also include gratuities, benefits and other compensation. The law also applies to the “hiring entity of an independent contractor.” Many Labor Code provisions already carry misdemeanor classification, and criminal prosecutions have been quite rare, but grand theft could be prosecuted (if at all) as a felony.

This bill adds Penal Code Sec. 487m.

Independent Contractor Traction
AB 1506 extends until Jan. 1, 2025, the temporary exemption for newspaper publishers and distributors from the application of the “ABC test,” which was established in the California Supreme Court’s Dynamex decision in 2018 and AB 5 in 2019 to determine if workers are employees or independent contractors. The bill also imposes reporting requirements on publishers and distributors to ensure that they are complying with the multifactor test for employment status previously adopted in S.G. Borello & Sons, Inc. v. Department of Industrial Relations.

This bill amends Labor Code Sec. 2783.

As a general rule, an exemption to the ABC test still requires satisfaction of “control” and other well-known factors described in

AB 1561 clarifies and updates four areas of AB 2257 in the prior year and AB 5:
• Extends to Jan. 1, 2025, the exemption for licensed
manicurists, within the Labor Code Sec. 2778 “professional services” exemption from the “ABC test.”

- Extends from Jan. 1, 2022, to Jan. 1, 2025, the exemption from the ABC test in Labor Code Sec. 2781 for work performed by subcontractors in the construction industry.
- Clarifies the exemption in Labor Code Sec. 2782 for research subjects providing feedback to data aggregators.
- Extends the Labor Code Sec. 2783 exemption for Department of Insurance licensees and workers who provide underwriting inspections, premium audits, risk management, or loss control work for the insurance and financial service industries, to also apply to persons who provide claims adjusting or third-party administration.

This bill amends Labor Code secs. 2778, 2781, 2782 and 2783.

**the California FAMILY RIGHTS ACT (CFRA) ALLOWS EMPLOYEES UP TO 12 WEEKS LEAVE OF ABSENCE DUE TO THEIR OWN MEDICAL CONDITION OR TO CARE FOR AN IMMEDIATE FAMILY MEMBER.**

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This bill amends Labor Code secs. 2778, 2781, 2782 and 2783.

**Responsibility for Garment Manufacturing Wages**

SB 62 requires that garment manufacturing employees can no longer be paid by the piece or unit, or by the piece rate and must instead be paid an hourly rate no less than the minimum wage, except for employees covered by certain collective bargaining agreements.

Employees’ recourse under the bill is to file a claim with the Labor Commissioner who may, in turn, bring an action to enforce the statute or issue a citation. Statutory penalties now apply at the rate of $200 “per employee for each pay period in which each employee is paid by the piece rate.”

The bill also aims to impose joint and several liability upon garment manufacturers, contractors and brand guarantors for unpaid wages, including overtime and premium wages, expenses reimbursements, attorneys’ fees, and civil penalties for failure to secure workers compensation insurance “regardless of how many layers of contracting” exist. Brand guarantors are a broadly defined group of those “contracting to have garments...”

Best practices for the treatment of California’s employees through legislation and guidelines are discussed in this issue. From the ABC test to the Garment Act, the Family Rights Act and beyond, California CPAs need to stay up-to-date with the law and how it affects their clients. This issue aims to help you navigate these legal changes and understand their implications.

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made.” “Contracts for the performance of garment manufacturing include licensing of a brand or name, regardless of whether the person with whom they contract performs the manufacturing operations or hires contractors or subcontractors to perform the manufacturing operations.” In addition, Brand guarantors must keep certain defined records regarding those contracts for four years.

This bill adds Labor Code Sec. 2673.2 and amends secs. 2671 and 2673.

No PAGA for Janitorial Employers Working Under a CBA

SB 646 blocks janitorial employees represented by a labor organization and performing work under a collective bargaining agreement (CBA) from filing a suit under PAGA. This PAGA exemption expires on the date the CBA expires or July 1, 2028, whichever is earlier.

“Janitorial employee” means an employee whose primary duties are “to clean and keep in an orderly condition commercial working areas and washrooms, or the premises of an office, multiunit residential facility, industrial facility, health care facility, amusement park, convention center, stadium, racetrack, arena, or retail establishment.”

The exemption from PAGA rights does not apply to workers who specialize in window washing, housekeeping staff who make beds and change linens as a primary responsibility, workers working at airport facilities or cabin cleaning, workers at hotels, card clubs, restaurants, or other good service operations, and grocery store employee and drug-retail employees.

This bill adds Labor Code Sec. 2699.8 until July 1, 2028.

minimum wage
IN CALIFORNIA INCREASED TO $15 PER HOUR ON JAN. 1 FOR EMPLOYERS WITH 26 OR MORE EMPLOYEES BASED ON LEGISLATION SIGNED BY GOV. JERRY BROWN IN 2015.

The California Family Rights Act (CFRA) allows employees up to 12 weeks leave of absence due to their own medical condition or to care for an immediate family member. AB 1033 expands immediate family members to include parents-in-law. This bill follows SB 1383 in the prior year which, among other things, expanded CFRA to cover any employer with five or more employees.

AB 1033 also requires the Department of Fair Employment and Housing (DFEH) notify an employee in writing of the requirement for mediation under the DFEH’s small-employer mediation program prior to the employee filing a civil action if mediation is requested by the employer or employee. This program applies to employers with between five and 19 employees.

LEAVES OF ABSENCE, POSTERS & DFEH MATTERS
More California Family Rights

The California Family Rights Act (CFRA) allows employees up to 12 weeks leave of absence due to their own medical condition or to care for an immediate family member. AB 1033 expands immediate family members to include parents-in-law. This bill follows SB 1383 in the prior year which, among other things, expanded CFRA to cover any employer with five or more employees.
This bill amends Government Code secs. 12945.2 and 12945.21.

Electronic Delivery of Workplace Notices
SB 657 clarifies that where an employer is required to physically post information in the workplace to apprise employees of their rights under applicable statutes, it “may also distribute that information to employees by email.”

This bill adds Labor Code Sec. 1207.

More Time for DFEH Action & for Lawsuits
SB 807 extends the time by which an individual can file a civil action for statutory violations by tolling that period while the DFEH investigates. The DFEH’s deadline to complete its investigation and issue a right-to-sue notice for employment discrimination complaints treated as class or representative complaints also is extended to two years.

The bill also requires that employers must now preserve personnel records for applicants and employees for four years from the date that the records were created after an employee is terminated, or when an applicant is not hired by a company.

Once an employer receives notice that a verified complaint has been filed, the employer must preserve all relevant records until after the resolution of the complaint or the expiration of the statute of limitations for the claims, whichever is later.

This bill amends Government Code secs. 12930, 12946, 12960, 12961, 12962, 12963.5, 12965, 12981 and 12989.1.
SETTLEMENTS & NONDISPARAGEMENT AGREEMENTS

Silenced No More Act

The Stand Together Against Non-Disclosures (STAND) Act, effective Jan. 1, 2019, prohibits employers from settling lawsuits and administrative claims using agreements that prevent the disclosure of factual information regarding sexual assault, sexual harassment, workplace harassment and discrimination based on sex, the failure to prevent acts of workplace harassment or sex discrimination, and retaliation against workers who report sexual harassment or sex discrimination.

SB 331, known as the Silenced No More Act, expands that law to prohibit provisions in certain agreements that prevent or restrict the disclosure of factual information related to claims involving all forms of harassment, discrimination and retaliation.

It prohibits employers from requiring an employee to sign a nondisparagement agreement or other document that has the purpose or effect of denying the employee the right to disclose information about unlawful acts in the workplace. It prohibits any provision in an employee’s separation agreement that restricts the disclosure of information about unlawful acts in the workplace.

Moreover, the bill requires that a nondisparagement or other contractual provisions that restrict an employee’s ability to disclose information related to conditions in the workplace to include specific language, substantially in this form, “Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful.” The employer must also notify the employee that he or she has the right to consult an attorney and has no less than five days in which to do so.

SB 331 applies to agreements made in exchange for a raise or bonus, made as a condition of employment or continued employment, and related to an employee’s separation such as a severance agreement. Excluded are negotiated settlement agreements made to resolve an underlying claim that has been filed by an employee in court, before an administrative agency, in an alternative dispute resolution forum or through an employer’s internal complaint process.

This bill amends Code of Civil Procedure Sec. 1001 and Government Code Sec. 12964.5.

WAGE AMOUNTS

Minimum Wage Going Up

Minimum wage in California increased to $15 per hour on Jan. 1 for employers with 26 or more employees based on legislation signed by Gov. Jerry Brown in 2015. The minimum wage for employers with 25 or fewer employees increased to $14 per hour.

State minimum wage changes impact classification of most exempt workers. In addition to “duties tests” for administrative, executive and
professional exemptions, a salary of at least twice the state minimum wage must be paid to meet the “salary basis test” (assuming another salary basis test does not apply).

By Jan. 1, the annualized salary rate that employers with 26 or more employees must pay to meet the exempt salary requirement will advance to $62,440. Employers with smaller workforces must pay at least $58,240 as salary to meet the test. State minimum wage increases also impact retailers who rely on the inside-sales exemption, which requires that employees be paid at least 1.5 times the state minimum wage, and at least half of their other earnings be from commissions.

Municipalities continue to create and increase their own minimum wage for companies with employees working in their jurisdiction. Employers must pay the higher of the state or local minimum wage. These local rates typically change Jan. 1 or July 1. Some are already in excess of $16 per hour.

Employers should monitor the requirements to assure compliance in each municipality in which they have employees working. A good starting place is the UC Berkeley Labor Center Inventory of U.S. City and County Minimum Wage Ordinances: laborcenter.berkeley.edu/inventory-of-us-city-and-county-minimum-wage-ordinances/.

Infused with Insight

Making a wine that stands the test of time—both in the bottle and in someone’s memory—is no easy feat, and neither is running a business. The financial rules and regulations around the wine industry are constantly changing, and that’s why BPM has a dedicated team of professionals who focus on wine clients. We infuse our technical expertise with 30 years of industry insights, trusted relationships and resourcefulness to bring a holistic approach to wine industry clients.

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Overtime Exemption for Some Computer Professionals

Labor Code Sec. 515.5 contains an overtime pay exemption for highly skilled computer professionals who spend more than half of their working time in top level intellectual or creative work that requires the exercise of discretion and independent judgment, such as software engineers and programmers, and systems designers and analysts.

To qualify for exemption, the employee also must be paid at least a minimum amount per hour or, alternatively, a salary equal to that hourly rate. Each year, the California Department of Industrial Relations sets that pay rate based on the California CPI increase.

For 2022, the minimum rates of pay required for this exemption are $50 per hour, or $8,679.16 salary monthly or $104,149.81 annual salary.

WHAT’S NEXT?

Employers should consider how these new laws impact their business and workplace, and then review and update their personnel and document retention policies and practices with experienced attorneys or human resource professionals.

Mark E. Terman is a partner with Faegre Drinker Biddle & Reath LLP in the firm’s Labor and Employment Group. You can reach him at www.faegredrinker.com.

municipalities continue to create and increase their own minimum wage for companies with employees working in their jurisdiction. Employers must pay the higher of the state or local minimum wage.

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Recruitment and retention are the backbone to the longevity of any successful organization—CPA firms included. When checking in with the state of those renowned "r" words amongst CalCPA firms, we discovered the focused effort of a few firms to offer specific internship slots to community college students. We dug a little deeper and asked questions about these efforts, as well as general recruitment and retention best practices. In doing so, we spoke to:

• Keith Hamasaki, Director, KROST; CalCPA LA Chapter First Vice President (KH)
• Michelle Lee, Pasadena City College Professor (ML)
• Sara Gregor, National Campus Recruiting Manager, Armanino LLP (SG)
• Johanna Sweeney Salt, CPA CGMA; Partner; Gray, Salt & Associates, LLP (JSS)

What is the biggest recruitment obstacle your firm encounters?

Finding the right talent. This is more than just finding people to do the work. We’re looking for teammates who support each other and can grow and develop into the CPA profession. Finding those types of teammates is difficult because it requires more than just the GPA.

At the community college, our biggest obstacle is firms seeing us as a worthwhile recruiting pipeline and therefore making a commitment of time and finances.

It’s very much a candidate market, so we’re competing a lot with other firms. A big obstacle is the competition.

Finding well rounded, qualified staff—there seems to be an ever-growing gap of students lacking the soft skills that are necessary for client interactions that go along with working in a small firm.

Community colleges are not traditionally schools that firms focus on when it comes to outreach and internships. Why is your firm involved here?

When I was in college, I started recruiting with accounting firms late because I worked 32–35 hours per week. I found myself struggling to catch up, and my classmates struggled because they were transfer students. I had a mission that just because these students started later, doesn’t mean they have to miss out on the opportunities that four-year university students are afforded. Since I’ve been with KROST, we’ve had this community college program, in partnership with professors Michelle Lee and Barron Yanaga, designed to help students understand and get to know the profession so, when they do start recruiting, after they transfer they can hit the ground running. What’s different about KROST’s community college internship and externship is that we don’t expect to give these students full-time offers—our goal is to provide them with the skills to be able to find their right fit within the CPA profession. If it happens to be with our firm, wonderful!

In California there are some community colleges from which the credits transfer really well into some of our target schools, so that’s been helpful. We can also recruit more diverse students—people who may be going back to school to obtain credits at community college because of the lower cost before moving on to get their bachelor’s degree.

What benefits have you seen for the students, schools and firms through this effort?

Our program helped community college students gather the right skills to pursue internships with other firms, leading them into careers as a CPA. A lot of these students weren’t aware of what a CPA profession could be. Community colleges that partner with local CPA firms will find that students are more engaged and want to learn more. Further, firms that participate can identify top students who want to do this work and want to learn. Decades ago, firms sought students who had experience in their accounting classes, but with internships these days, students haven’t even taken audit or tax classes prior to starting their respective internship.

For many students, it is their first exposure to the profession. The visits, interviews and internships give students
a view of what accountants do, what their career options are and ways to build their soft skills. For the schools and professors, it gives students a tangible goal and reason to work for solid foundational knowledge and good grades. I think folks who go to community college right out of the gate may not know right away what they want to specialize in. Being on campus helps us educate people as to what their career path looks like—and we might inspire people to go to school for accounting.

What obstacles and challenges has your firm encountered with this program?

You need a team that is willing to be educators—that is patient and willing to teach basic concepts. However, this is no different from what we do on a daily basis in terms of communicating complex concepts to our clients in a manner that’s easily digestible. It’s part of our firm’s culture and we believe that it’s for the greater good of the community that we empower these students to strive for more.

Community college attendees don’t necessarily start thinking about internships until they reach a bachelor’s program at a larger, four-year institution. Community colleges could do a better job of informing students that you can absolutely get an internship earlier.

What advice do you have for firms considering moving into the community college space?

At our CalCPA chapter, we’ve started to incorporate other firms into our CalCPA Summer Leadership Program that introduces community college students to a variety of firms. One very noticeable challenge is that the students can be a little more raw in their interviewing and soft skills. For most, this is the first office job that they’ve had, and it takes patience to train and teach. Even with the added challenge, we would absolutely advise them to pick a local community college and start a dialogue with them, because this is where a lot of the next generation of accounting students are coming from.

Give students the space to use these opportunities and time for exploration. Understand that some students may choose a different track and firms should be OK with that. Please be patient. The infrastructure in career services at some community colleges aren’t set up the same way as at four-year universities. It takes a little bit of time to build trust, relationships and get to know the professors. And, some professors at community colleges are also working professionals elsewhere—it’s not their full-time job. A communication gap can exist unless you’re active and making relationships with them.

Where and how else is your firm engaged in entry-level recruiting?

At KROST, we participate in meet the firms, mock interviews, special presentations and CalCPA student and young emerging professional events.

Armanino has 14 recruiters placed across the country. We all cover schools where we go to all their events and are actively engaged. Each recruiter will also have two or three schools where we might just do one class talk or a job poster event there.

We attend meet the firms events at local colleges/universities and the local CalCPA scholarship events.

Research indicates that strong onboarding programs, the creation of communities within your organization, manager training to lead diverse teams, robust mentor programs, and transparent growth promotion and retention plans are highly effective in attracting and retaining diverse talent. What strategies are you or your firm supporting (or planning to implement) in these areas?

We have buddy programs, mentorship, learning ladders, stay meetings and 360 feedback that is done throughout the year for our full-time staff. We also include the community college internship and externship program as part of our strategy because it helps us keep in touch with the community and identify people early on who we believe will help us make that community better. This year our firm, along with 10 others across the nation, participated in the selection of the George Willie Ethnically Diverse Student Scholarship and internship program.

I’ve seen KROST bring back interns for a second/third rotation for students who have a gap of time between graduating and beginning their full-time positions. KROST also has built strong loyalty ties with their former interns as seen in alumni events, etc.

We have a transparent growth plan; our team knows what it takes to make partner and the steps required to get there. Because we are a smaller firm, relationships make a huge difference in our office environment. We utilize one-on-one training and try to get our team members up to speed in a variety of tasks. We want our team to be well-rounded advisers who can meet client needs while gaining an understanding of what they really enjoy doing so they can pursue more work of that nature.

Does your firm offer a mentorship program? If so, what does that look like?

The short answer is absolutely. Every new hire is given a buddy to introduce them to the firm and the basics. After a period of time when they feel like they’ve become part of the firm, they’re asked to select a mentor. The mentor is from a different department and helps align and develop their goals on an at least quarterly basis.

All of our new hires get a buddy—their mentor—and they also get a performance coach. The buddies assigned have to apply. It’s selective because we want strong, committed people. We introduce the buddies to new hires well before they start so they can ask questions before they get in the door. Once here, that support might look like a periodic coffee, a lunch or maybe meeting every couple of weeks just to check in, as well as being there on Teams.

Our partners directly mentor our team members; we have monthly lunches where a team member meets with a partner and any topic is fair game (the team member sets the agenda) as well as a quarterly meeting with a different partner that is more performance oriented. Our partners also have open door policies and our team knows they can come in with anything and we’ll make the time to help them.

Does your firm take into consideration DE&I concerns when recruiting?

Yes, absolutely. As I mentioned above, we are one of the 10 firms participating in the AICPA’s George Willie scholarship program, which helps to support diversity in accounting students. Our commitment to diversity is another reason we try to get involved with students still in community college, because we are trying to promote the CPA profession to students who may not have thought they would “fit in” to the profession and show them how valuable their contributions can be. Additionally, we have partnered with local community colleges to award scholarships for diverse students.

We’re actively participating in diverse events on campuses across the nation. We also have the IDEAL team (armaninollp.com/company/who-we-are/ideal), which is a whole group that is passionate about DE&I. Our firm tries to find the most qualified candidates. We do seek out a diverse team in all respects to create a more well-rounded and capable core group. The more diversity within our ranks, the better decisions we make.

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defaulted increased (i.e., with no Protests or Appeals being filed). Is administrative relief available for taxpayers who did not timely protest or appeal due to not receiving the NOAs or NPAs timely due to COVID-19?

R: The number of assessments and protests since the beginning of the COVID-19 pandemic is comparable to years prior. We do not have data on why a taxpayer chooses not to file a protest. Pursuant to Revenue and Taxation Code section 18416, if we mailed the NPA to the taxpayer’s last known address, the notice satisfies due process, even if the taxpayer did not receive the NPA timely because of COVID-19. If a protest is received after the statutory 60-day period, the protest cannot be considered timely filed. The Taxpayer Rights Advocate will work with Protest management if contacted about a case with due process concerns.

FTB Pass-through Entity Update
The FTB was working to create necessary forms and provide guidance to taxpayers and their representatives about the Pass-through Entity Tax (PTE) legislation.

PTE legislation, under AB 150, allows electing qualified pass-through entities to pay California state tax at a flat rate of 9.3 percent of the distributable income allocated to consenting owners (including shareholders, partners and members). These elective withholding payments give rise to a federal tax deduction at the entity level and the consenting owners receive a corresponding credit against California tax passed through to them on their K-1s.

Qualified pass-through entities are those federal tax either as S corporations or partnerships, except entities that (1) have one or more partnerships as owners; or (2) are publicly traded partnerships; or (3) are required or permitted to file their tax returns as part of a combined group.

A qualified pass-through entity becomes an electing qualified pass-through entity by including the appropriate annual, irrevocable election with its originally filed return and by making the associated elective tax payments in a timely manner. For tax year 2021, the full payment equal to 9.3 percent of distributable income to consenting owners must be deposited with the FTB on or before the original due date of the return, without regard to extensions (so by March 15 for calendar year entities). For tax years 2022–25, the greater of $1,000 or 50 percent of the prior year elective tax must be deposited with the FTB by June 15 of the current tax year. The full payment equal to 9.3 percent of distributable income to consenting owners, less the payment made on June 15, must be deposited with the FTB by the original due date of the associated tax return without regard to extensions. Failure to make timely payments precludes an entity from making the election for that tax year.

Once an entity has determined that it will make the election to provide elective tax withholding and has identified consenting owners, it must calculate the tax to be paid on behalf of the consenting owners. The required payment and amount of the corresponding credit is 9.3 percent of distributable income allocable to consenting owners. There is no option for either the entity or owners to elect a higher or lower rate of withholding and the credit is non-refundable. Any amount of credit not used in the current year to offset individual tax on the return of the consenting owner can be carried forward for five years, after which time it expires.

AB 150 does not include a provision allowing the elective withholding credit to offset California tentative minimum tax, which in some cases will significantly limit the consenting owner’s ability to use the credit in the current and future tax years.

The opportunity to deduct individual state tax payments against business income from pass-through entities may provide significant federal tax savings to many California taxpayers.
What do you think crypto regulation will look like? It’s hard to say. The current infrastructure bill is attempting to redefine the definition of a broker and possibly push cryptocurrency exchanges like Coinbase and others to begin reporting 1099 information to the IRS on behalf of their customers, similar to what traditional brokerages currently are required to do. I think that’s the start. The hard part will be figuring out regulations that will help track information without being overly burdensome to the crypto space and effectively slow down innovation. Some traditional rules will be hard to follow especially in the decentralized finance (DeFi) space where there are no real service providers and “customers” interact directly with a protocol rather than with a human. Forcing 1099 tracking to KYC rules on these types of platforms may be impossible or if possible, overly burdensome to the industry.

What are the tax implications surrounding cryptocurrency? That’s a loaded question since it all depends on what you’re doing with crypto. If you buy and hold as a long-term investment, you’re likely going to see similar treatment to if you bought and sold stock. If you are mining or staking crypto, then you’d likely end up with trade or business income treatment under Tax Notice 2014-21. I’d recommend reviewing Tax Notice 2014-21, along with the IRS FAQs as a start for guidance on how to treat cryptocurrency transactions. Currently there’s no specific guidance on how NFTs (non-fungible tokens) are treated. However, one could glean from traditional rules and refer to my initial thoughts of it depends on what you are doing. If you’re purchasing digital art, this may be deemed to fall under the IRS’s definition of a collectible, which has an even higher tax rate than that of stock or other digital assets if held long-term.

What should CPAs be wary of concerning crypto when advising their clients? I’d say one of the most overlooked and scary compliance issues that comes up is when somebody opens a large number of accounts on various platforms. If some of those platforms are headquartered outside of the U.S., those accounts may be deemed to fall under the definition of a foreign financial institution and may be subject to the FINCEN 114 (Foreign Bank Account Reporting) filing requirements. If you miss reporting a foreign account, then you could be subject to fines and penalties of $10,000 or more for not reporting.

How should CPAs be preparing to deal with cryptocurrency? CPAs are going to run into clients opening dozens of new accounts trading new digital assets that the IRS has no guidance on. I’d recommend having a discussion with clients before year end to get a beat on what activities they’ve been involved with regarding crypto. Chances are if you had a client that traded crypto in 2020, they’re probably on to a dozen new things in the DeFi space such as staking, liquidity pools or yield farming. What I like to ask is that the client or prospect provide a summary of all of the crypto accounts and activities. I think it’s also helpful to suggest (if your client isn’t already doing so) to track their crypto transactions with a third-party crypto tracking software. There are many out there that have been keeping with all the new DeFi products.

Crypto Thoughts, By Dan Herron

On Tax Reporting: Since there are no 1099-Bs issued (which there should be), investors don’t put 2 and 2 together that they need to report their sales. We’ve had to amend returns because we discovered sales in prior years. There are companies that will compile the transaction into the Schedule D and Form 8949 (Cointracker, tokentax, ZenLedger, etc),
which you can attach to the return, but you still need to verify the numbers from the data which the clients can extract. However, the reporting on a lot of the crypto platforms isn’t quite there yet for the info we need.

**ON SPENDING IT:** Many people don’t realize that spending crypto causes a taxable event.

**ON RECEIVING IT:** Is it a gift? Is it payment for services or products? Those both have different tax consequences.

**ON THE WASH SALE RULE:** Since crypto is treated as property, the Wash Sale Rule doesn’t apply. So someone could buy and sell and then buy back again and not have to be worried about disallowed losses. Current legislation is trying to treat crypto as a security to be subject to 109-B reporting, which would be a big benefit for tax preparers in my opinion.

**ON FOREIGN REPORTING:** If you have a wallet or custodial accounts overseas, there’s a chance that you’re subject to FBAR and 8938 reporting.

**ON NFTS:** How do we treat this in terms of capital gains? Is it a collectible? Considering it is widely being used for artworks, the consensus so far is that the collectible capital gain rate applies. However, there’s no clear guidance on this.

**ON EXCHANGING IT:** If you exchange one crypto for another, that’s taxable.

**ON TAX PLANNING:** It can be difficult to tax plan if you’re looking to rebalance the crypto portfolio considering how it constantly changes value.

**ON VIRTUAL CURRENCY MINERS:** What expenses are deemed ordinary and necessary in the course of that business? That’s a new one we need to understand. If you’re a miner and investor, what’s the proper record keeping to make sure you are reporting transactions in an appropriate manner? If you’re paying people in crypto and issuing 1099s, how do we value those payments?

**ON YIELD FARMING:** Make sure you report the crypto/interest received from yield farming. If you receive crypto as interest, you pay tax on that. If you then spend the crypto that you received as interest, you pay tax on that as well. There are a lot of situations where you could get double taxed. 

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Attracting Leaders
Voices: People, Culture & Perspectives

It’s challenging for organizations to wrap their arms around such a hefty topic as diversity, equity and inclusion (DE&I). There can be uncomfortable conversations. There’s the prospect of one’s mind being changed in the course of those conversations. Not to mention a sense of, “Where and how do we even begin, much less determine how to make an impact?”

While a seemingly daunting topic, our previous columns have chronicled some areas of focus—including raising awareness of the issues, attracting diverse talent and driving career choice—that can serve as starting points to developing solutions.

And part of this initiative, of course, are ongoing discussions—discussions about what’s worked and what hasn’t, and what can potentially be done differently.

As Denise Froemming, CalCPA’s new president and CEO said in the December issue of California CPA (Page 2), “The best way to address DE&I is to be curious, have uncomfortable conversations, remember it’s a journey not a destination and continue to move forward with measurable results. There will be bumps in the road and times we skin our knees, but we need to keep moving.”

A portion of our recent virtual Council meeting was spent on DE&I, with members exchanging thoughts and ideas in various breakout rooms related to a DE&I best practices framework and considering questions that asked what should the framework look like, what should be included, how can it be structured and how do we measure progress?

The aim of the session was to gather input and potential action items that CalCPA can use when promoting leadership opportunities—whether at the chapter or state level.

The following are selected highlights from the various discussions.

- **Make it personal**: Promote personal stories of DE&I successes.
- **Expand what diversity includes**: Focus should be diversity in all areas, including experience and background.
- **Next-gen**: Evaluate our professional makeup to help drive engagement of Gen Z and Millennials, as well as understand the perception of the profession by these groups and reach out to them on platforms they use.
- **Map it**: To help provide support and development for younger generations, provide a road map for success and advancements/improvements/involvements.
- **Break down barriers**: Identify barriers to entry into the profession and show the multiple facets/career paths of the profession.
- **Buddy up**: Consider mentors/sponsors to help encourage younger professionals to be members and walk with them on their career path.
- **Grab your partner**: Form alliances with other diverse organizations, groups and clubs that can help with finding diverse members.
- **Reach out**: Increase outreach to target audience to areas like high schools, junior colleges and industry to join CalCPA and showcase volunteer opportunities.
- **Data driven**: Collect more demographic data to help evaluate where we are doing well and what we need to work on.
- **Leadership pipeline**: Along with increasing awareness of leadership opportunities, offer help with experience and encourage/inspire others to take that next step.
- **Experience is relative**: Reduce the emphasis on the experience requirement to be part of a CalCPA state committee. Help people gain experience by providing them with experience.
- **Lift as we climb**: Everyone should be helping each other move up.

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CalCPA offers live and virtual courses, discussions, networking sessions and more, all around the state. Take advantage of events in your own chapter or consider attending an event in a neighboring chapter. Where will you be seen?

FEATURED EVENTS

JAN. 11
Inland Empire Chapter
Firm Management Roundtable:
Tax Season Strategies
Ready to connect with other firm administrators, managers, partners, and professionals involved in the operation of a practice? Interested in an exchange of ideas and information? Join us for an informal time of discussion and networking with Frances Salinas-Bernal (Wilson Ivanova CPAs), Hannah Baldwin (Smith Marion & Co, LLP) and Daniel Gregory (Genske Mulder & Co.) as your facilitators. Don’t miss the opportunity to discover efficient solutions and effective methods being used by your peers in the Inland Empire.

keep checking calcpa.org/chapterevents for all of our chapter events.

FEB. 2
Peninsula Silicon Valley Chapter
Nonprofit Group: VIRTUAL Meeting
Join members who specialize in working with nonprofits for an interactive discussion regarding a variety of hot topics. This group meets on the first Wednesday of the month to provide a forum to discuss relevant topics and share helpful information. We welcome all input and attendance at previous sessions is not a pre-requisite.

Three times a year, CalCPA will also hold the CPAJOBS.CALCPA.ORG EMPLOYERS:
Target Candidates with Ease
PROFESSIONALS:
Take Your Career to the Next Level
• PLACE your job in front of CalCPA’s highly qualified members and opportunity seekers.
• SEARCH our resume database of qualified candidates.
• MANAGE jobs and applicant activity right on our site.
• LIMIT applicants only to those who are qualified.
• FILL your jobs more quickly with great talent.
• LEVERAGE social connections by posting your resume or anonymous career profile that leads employers to you.
• SEARCH and apply to accounting jobs on the spot by using robust filters.
• SET UP efficient job alerts to deliver the latest jobs right to your inbox.
• SEEK expert advice on career topics.
• GAIN insights and detailed data within the accounting profession including salary, job outlook videos, education, and more!
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EMPLOYERS:
Target Candidates with Ease

- **PLACE** your job in front of CalCPA’s highly qualified members and opportunity seekers.
- **SEARCH** our resume database of qualified candidates.
- **MANAGE** jobs and applicant activity right on our site.
- **LIMIT** applicants only to those who are qualified.
- **FILL** your jobs more quickly with great talent.

PROFESSIONALS:
Take Your Career to the Next Level

- **LEVERAGE** social connections by posting your resume or anonymous career profile that leads employers to you.
- **SEARCH** and apply to accounting jobs on the spot by using robust filters.
- **SET UP** efficient job alerts to deliver the latest jobs right to your inbox.
- **SEEK** expert advice on career topics.
- **GAIN** insights and detailed data within the accounting profession including salary, job outlook videos, education, and more!

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