



**COLLISION INDUSTRY**  
CONFERENCE

# Employment Laws Update 2021

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# What is “new” for 2021?

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## Hot Labor & Employment Topics

- Immigration (stay tuned...)
- Covid-19 Employee Assistance
- Minimum Wage
- Independent Contractors – “gig economy”
- Aggressive Enforcement
- Paid Sick Leave
- Expansion of Family Care & Medical Leaves of Absence
- Attacks on Mandatory Arbitration
- Increased Support for Unionization

# COVID-19 Assistance

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## Federal **FFCRA NOT extended** into 2021

### **However...Guidance from the US DOL on 12/31/2020 stated**

**Q: I was eligible for leave under the FFCRA in 2020 but I did not use any leave. Am I still entitled to take paid sick or expanded family and medical leave after December 31, 2020? (added 12/31/2020)**

**A: Your employer is **not required** to provide you with FFCRA leave after December 31, 2020, but your employer **may** voluntarily decide to provide you such leave. The obligation to provide FFCRA leave applies from the law's effective date of April 1, 2020, through December 31, 2020. Any change to extend the requirement to provide leave under the FFCRA would require an amendment to the statute by Congress. **The Consolidated Appropriations Act, 2021, extended employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021. However, this Act did not extend an eligible employee's entitlement to FFCRA leave beyond December 31, 2020.****

# COVID-19 Assistance

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## Federal CARES Act **NOT** extended into 2021

### **However...Continued Assistance for Unemployed Workers Act of 2020:**

- Provides for an extension of the CARES Act **unemployment provisions** from December 31, 2020 **until March 14, 2021**, including the provisions that had **created a new form of benefits for all self-employed individuals**: pandemic unemployment assistance (PUA).
- **If you use Independent Contractors BEWARE!** ICs may applications without a self-employed designation. This could create a false record that a contractor is an employee of the company. Timely contest! (Avoid erroneous assessments of unpaid unemployment taxes, could prompt Gov't audits, misclassification lawsuits!)

# Minimum Wage Issues

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- EXPECT Increase in Federal Minimum Wage
- FLSA 7(i) Exempt Workers (flat/flat, commission)
  - **NOT CALIFORNIA**
  - Minimum Wage increases affect the exemption threshold!
    - Remember the basics of the exemption...“7(i) Exempt” *if*:
      - Make 1.5 times minimum wage for all hours worked; AND
      - At least one-half of earnings are from commission (including flag/flat)
  - Make sure you update your calculations!
- **California**
  - **No 7(i) Exemption** – Hourly plus production bonus possible as long as you properly calculate and pay Overtime and Rest Period wages
  - “White Collar” exemptions ARE TIED TO MINIMUM WAGE – make sure you update your salaries!

# Independent Contractors

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## Recent DOL Guidance – January 6, 2021

- Reaffirmed the “**economic reality test**”
- Defines an independent contractor as anyone who is “**as a matter of economic reality, in business for him- or herself.**”
- **Provide factors** to assist in determining whether an individual is properly classified as an employee or independent contractor. Makes clear that **two factors are the most probative and carry greater weight** than any other factor. These factors are:
  - (1) the *nature and degree of control over the work* and
  - (2) the *worker’s opportunity for profit or loss based on initiative and/or investment.*

# Independent Contractors

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## Don't get too excited!!

- This is on the Biden/Harris Priority Agenda - The “ABC Test” (CA, NJ, & Others)
- Worker presumed to be an EMPLOYEE, unless the hiring entity proves:
  - A. The worker is **free from the control and direction** of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
  - B. The worker **performs work that is outside the usual course of the hiring entity's business**; and
  - C. The worker is **customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.**

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# State – Specific & Other Issues

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- Paid Sick Leave
- Expansion of Family Care & Medical Leaves of Absence
- Attacks on Mandatory Arbitration
  - Implement NOW, if you still can...
- Expect Aggressive Enforcement
  - VP Harris is former California Attorney General -- enforced CA's labor/employment laws...enough said...
- Increased Support for Unionization
  - Sec'y of Labor Nominee – Union official in Boston before becoming Mayor (with large support of organized labor, including AFL-CIO)

# Questions?

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