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# California to Increase Salary Threshold for Computer Professional Exemption

California exempts certain computer professionals from its overtime pay requirements if they are compensated at or above a level set by the state and satisfy a stringent job duties test. Effective January 1, 2017, computer professionals will have to earn a salary of $88,318.55 annually or an hourly wage of $42.39 to qualify for the California exemption. Employers will want to review their pay practices and make any appropriate adjustments by January 1.

Background

The Fair Labor Standards Act (FLSA) establishes federal minimum wage and overtime pay requirements for public and private sector employers. DOL regulations establish criteria to exempt certain "white-collar" employees — executive, administrative, professional, outside sales and computer employees — from those requirements. Currently exempt are computer systems analysts, computer programmers, software engineers, and other similarly skilled workers who meet certain job duties tests and are paid at least $455 per week ($23,660 annually) on a salary basis or at least $27.63 an hour if paid on an hourly basis. On December 1, the minimum salary threshold is scheduled to more than double to $913 per week ($47,476 annually). (See our May 18, 2016 *FYI Alert*.)

> **Comment.** Different sections of the FLSA provide exemptions for employees in certain computer-related occupations depending on whether they are paid an hourly rate or on a salary or fee basis. The scheduled increase on December 1 affects only salaried employees.

While the FLSA provides minimum wage and hour standards, it does not prevent a state from establishing higher or more protective standards, and a number of states — like California — have done so. If a state establishes higher standards, employers must comply with those.
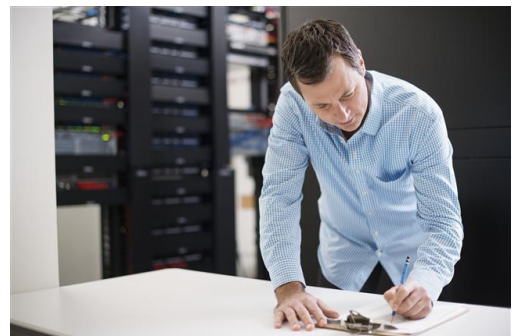
California Computer Professional Exemption

Like the FLSA, California law requires employees to satisfy both a salary and a job duties test to qualify for a computer professional exemption. To satisfy the state's current minimum earnings test, California computer software professionals must be paid an hourly rate of at least $41.85 or a salary not less than $87,185.14 per year ($7,265.43 per month) — more than 3½ times the current federal salary requirement.

2017 Rates Change. On October 1 of each year, California's Department of Industrial Relations (DIR) adjusts both the minimum hourly pay rate and the salary level for the following year based on the California Consumer Price Index for Urban Wage Earners and Clerical Workers. The DIR recently announced that the rates for the computer employee exemption from state overtime pay requirements will increase next year. Effective January 1, 2017, the minimum dollar amounts for the exemption will be: an hourly rate of $42.39, a monthly salary of $7,359.88, and an annual salary of $88,318.55.

> **Comment.** Because California has — and in 2017 will still have — a higher salary requirement for the computer professional exemption than under federal law, the scheduled increase in the FLSA's salary threshold will not affect the exempt status of California computer software professionals.

Duties Test Unchanged. Under the FLSA, the computer professional exemption generally applies to employees whose primary duty is computer systems analysis, programming or related work in software functions. California applies a more stringent test than the FLSA, requiring an employee to be "primarily engaged" in exempt work for more than 50% of his or her time each workweek to qualify for the exemption.

Under the California Labor Code, an employee in the computer software field is exempt from overtime pay requirements if he or she meets the statutorily specified pay rate and is:

1. Primarily engaged in intellectual or creative work that requires the exercise of discretion and independent judgment.
2. Primarily engaged in duties that consist of one or more of the following:
   a. Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications.
   b. Design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.
   c. Documentation, testing, creation or modification of computer programs related to the design of software or hardware for computer operating systems.
3. Highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming or software engineering.

In Closing

Employers with exempt computer software engineers in California should make sure that those workers will be paid at or above the new 2017 thresholds to maintain their exempt status. Because that is only one of the criteria for the exemption, employers should also review their job duties to ensure compliance.

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