

## California Increases 2018 Threshold for Computer Software Employee Exemption

California exempts certain computer professionals from its overtime pay requirements if they are compensated at or above the level set by the state each year and satisfy a stringent job duties test. Effective January 1, 2018, computer software employees will have to earn a salary of \$90,790.07 annually or an hourly wage of \$43.58 to qualify for the exemption. Employers will want to review their pay practices and make 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.

While the FLSA sets 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 sets standards more favorable to employees, employers must comply with those.

### California Computer Professional Exemption

Like the FLSA, California law requires employees in the computer software field to satisfy both a salary and a job duties test to qualify for the 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 \$42.35, or a salary of not less than \$7,352.62 per month or \$88,231.36 per year – more than 3½ times the current federal salary requirement.

**Comment.** The Obama administration’s 2016 overtime rule that would have more than doubled the minimum required



salary level for white-collar exemptions from \$23,660 to \$47,476 with automatic adjustments every three years was invalidated by a federal court. (See our [September 22, 2017 For Your Information.](#)) If, as expected, the current DOL updates the white-collar regulations, any increase in the minimum thresholds for exempt status would likely be substantially lower. While such an increase could impact computer professionals nationally, it is unlikely to affect the exempt status of California computer professionals given the state's substantially higher rate.

## 2018 Rate Increase

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. On October 3, the DIR [announced](#) that the rates for the computer employee exemption from state overtime pay requirements will rise 2.9% next year, reflecting the increase in that index. Effective January 1, 2018, the minimum dollar amounts for the exemption will be: an hourly rate of \$43.58, a monthly salary of \$7,565.85, and an annual salary of \$90,790.07.

## Duties Test Unchanged

The FLSA generally applies the computer professional exemption to employees whose "primary duty" – defined as the principal, main, major or most important duty the employee performs – is computer systems analysis, programming or related work in software functions. However, California applies a more stringent test. To qualify for the computer professional exemption under state law, an employee must be "primarily engaged in" performing certain statutorily specified duties. For these purposes, the term "primarily engaged in" means that the employee must spend more than 50% of his or her work time each workweek on those activities.

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

The Labor Code also specifies certain computer-related duties that do not qualify for the exemption.

## In Closing

Employers with exempt computer software employees in California should make sure that they will be paid at or above the new 2018 thresholds to maintain exempt status. Along with pay, employers should review employees' current job duties to ensure that they continue to satisfy all criteria for the computer professional exemption.

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