

# FYI<sup>®</sup>

## For Your Information<sup>®</sup>

### **California increases 2022 threshold for computer professional 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, 2022, computer software employees will have to earn a salary of \$104,149.81 annually or an hourly wage of \$50.00 to qualify for the state exemption. Employers will want to review their pay practices and make any appropriate adjustments by January 1.

Volume 44

Issue 37

November 4, 2021

#### **Authors**

Nancy Vary, JD

Amy J. Heinze

### **Background**

The Fair Labor Standards Act (FLSA) establishes federal minimum wage and overtime pay requirements for public- and private-sector employers. U.S. Department of Labor (DOL) regulations establish criteria to exempt certain “white-collar” employees — executive, administrative, professional, outside sales and computer employees — from those requirements. Currently exempt computer employees include computer systems analysts, programmers, software engineers, and other similarly skilled workers who meet certain job duties tests and are paid at least \$684 per week (\$35,568 annually) on a salary or fee 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 \$47.48, or a salary of not less than \$8,242.32 per month or \$98,907.70 per year — nearly three times the federal threshold.

## 2022 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 (CPI) for Urban Wage Earners and Clerical Workers. On October 18, the DIR announced that the compensation threshold for the computer employee exemption from state overtime pay requirements will rise 5.3% next year, mirroring the increase in the CPI. Effective January 1, 2022, the minimum compensation rates for the exemption will be: an hourly rate of \$50.00, a minimum monthly salary of \$8,679.16, and a minimum annual salary of \$104,149.81.

**Buck comment.** In light of the significant increase in California's 2022 computer professional pay threshold for exempt status, multi-state employers should consider how they will address pay rates, parity and differentials among computer professionals both in and outside California.

## 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 California law, an employee must be "primarily engaged in" — or spend more than 50% of their work time each workweek — performing certain statutorily specified duties.

The California Labor Code exempts computer software employees from overtime pay requirements if their pay is not less than the statutorily specified rate and they are:

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:
  - Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications
  - 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
  - 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

California employers that rely on the state's computer professional exemption should review employees' compensation and make any adjustments needed to maintain their exempt status by January 1, 2022. Employers should also review employees' current job duties to ensure that they continue to satisfy all criteria for the computer professional exemption.

### **2021 Reporting and Disclosure (R&D) Guide**

Now available to help you meet your employee benefit R&D obligations, download the latest edition of Buck's *Reporting and Disclosure Guide: Retirement and Welfare Benefit Plans.*

#### **Produced by the Compliance Consulting Practice**

The Compliance Consulting Practice is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, training, and knowledge management. For more information, please contact your account executive.

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.