

California's New Minimum Pay Requirements for Computer Professional Employees Take Effect January 1, 2012

November 22, 2011

Effective January 1, 2012, the required minimum pay/salary for those employees exempt from overtime under the California computer professional exemption is increasing. According to the California Department of Industrial Relations (DIR), which announced the increase on November 4, to qualify for the exemption an employee must be paid a salary of at least \$81,026.25 annually (\$6,752.19 monthly) or a minimum hourly rate of \$38.89, an increase of 2.5%.

Employers with employees covered by the computer-related professional exemption should keep in mind that there are important differences between the federal and California exemptions, which we set out below.

Compensation Requirements

Under California law, employees must be paid (effective January 1, 2012) at least \$38.89 per hour or an annualized salary of \$81,026.25. In contrast, under federal law, employees must only be paid at least \$455 per week on a salary basis or, if paid on an hourly basis, no less than \$27.63 an hour.

Job Duties

As courts and agencies continue to emphasize, job titles and the requisite compensation alone do not determine exempt status. To determine if this exemption applies to a particular employee, an employer must carefully review the employee's specific job duties and the requirements set forth in Sections 13(a)(1) and 13(a)(17) of the federal Fair Labor Standards Act and Section 515.5 of the California Labor Code.

Exemptions

Both federal and California law expressly exclude from their exemptions the following:

- 1) Employees engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment
- 2) Employees whose work is highly dependent upon or facilitated by the use of computer software programs and who are skilled in computer-aided design software, but who are not in a computer systems analysis or programming occupation

California's exemption also excludes the following:

- 1) Trainees and employees learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering
- 2) Employees in a computer-related occupation who have not attained the level of skill and expertise necessary to work independently and without close supervision
- 3) Writers engaged in preparing material, such as box labels, documentation, setup and installation instructions, or other similar written information, or content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs
- 4) Employees engaged in any of the otherwise exempt activities for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry

Under both federal and California law, an employer should also evaluate other applicable exemptions, such as the professional exemption, the administrative exemption, the executive exemption, and, under federal law, the highly compensated employee exemption.

If you have any questions or would like more information on the topic discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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