

California Clarifies Overtime Exemption for Computer Professionals (Labor Code 515.5)

October 2, 2008

On September 30, Governor Schwarzenegger signed Assembly Bill 10 (AB 10), which clarifies California Labor Code section 515.5's exemption for computer professionals paid on a salaried basis.

As amended, Labor Code 515.5's overtime exemption applies to employees who meet specific **duties** requirements and earn:

- At least \$36 per hour; *or*
- An annual salary of at least \$75,000 for full-time employment (which will adjust upward on January 1, 2009).

In addition to clarification on the salary basis, the provisions of AB 10 provide clarification of the skills test in 515.5(a)(3), to require that an employee possess skill in one of three disciplines—computer systems analysis, programming, or software engineering—not all three. Finally, the bill makes a technical clarification to the exception in 515.5(b)(4) applicable to employees who use computer-aided design software.

Classified as an “urgency” bill, AB 10 took effect upon signature by the governor. Furthermore, because the bill was signed on September 30, 2008, the Division of Labor Statistics and Research may adjust, effective January 1, 2009, the minimum hourly pay rate and the salary level by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

Practical Advice for California Employers

Employers with employees in California should carefully examine each of the requirements of the computer professional exemption found in Labor Code section 515.5 in order to determine whether their employees meet each of the requirements of the exemption. Even with the changes accomplished by AB 10, the exemption available under 515.5 remains, in many cases, a tougher exemption than those that exist for other white-collar exemptions.

Several groups, in a coordinated response, have objected to the clarification of 515.5, with arguments that the bill results in a “take-away” for high-tech workers. These objections are questionable. First, the white-collar exemptions that have always been and remain available for high-tech workers—

administrative, professional and executive—have a salary basis requirement of *only* twice the minimum wage (an annual salary of \$33,280). Consequently, this bill may result in an *increase* in pay for certain high-tech workers because an employer who chooses to rely on 515.5 must pay *more than four times* the current hourly minimum wage rate of \$8 per hour (i.e., \$36 per hour) or *more than twice* the salary basis applicable to the other exemptions (i.e., \$75,000 on an annual basis or \$6,250 per month.)

In addition, prior to this recent clarification, 515.5 permitted employers to pay high-tech workers either an hourly rate of at least \$36 per hour or the “annualized full-time salary equivalent” of that rate. Consequently, employees who earned either \$36 per hour (\$72,000 assuming 2,000 hours of work per year) or a salary equivalent to \$36 per hour, and who otherwise qualified for the exemption, were not entitled to overtime payments of any type. In other words, prior to the change, 515.5 provided that employers could pay high-tech employees on a salary basis and qualify for the exemption. There remained, however, an ambiguity as to how an employer should calculate the required salary. AB 10 provides clarity by establishing an unambiguous salary amount. Employers can pay on *either* an hourly *or* a salary basis; high-tech professionals need not punch a clock, as a number of lawsuits have claimed.

With this important salary-basis ambiguity resolved, employers seeking to remain in the forefront of global high-tech innovation can have more certainty in hiring exempt, professional high-tech employees to work in California.

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