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## **California Amends Overtime Exemption for Computer Professionals**

In a positive development for California employers, California has changed its overtime exemption for computer professionals. The term “computer professional” is generally intended to refer to jobs such as computer programmers, software engineers, systems analysts, and other software-related positions. The new law, Assembly Bill 10, provides that the minimum salary requirement for salaried exempt computer professionals is \$6,250 per month, which is \$75,000 per year. The law continues to impose the same strict job duties requirement for the exemption, which must be satisfied in addition to the compensation requirement and continues to be the focus of numerous class action lawsuits.

Under prior law, employers could either compensate exempt computer professionals: (a) on an hourly basis at the rate of \$36 per hour, or (b) on a salary basis at an annual salary of \$74,880, but only if the employee was also guaranteed at least \$36 per hour for every hour worked. The prior requirement to guarantee salaried computer professionals \$36 per hour for all hours worked created serious practical problems. It effectively required that time cards be kept for exempt employees. The law was also ambiguous as to whether employers were required to pay an additional \$36 per hour for each hour worked over 40 in one week, or whether the amount of an employee’s salary above \$74,880 could be taken into account to determine whether the employee earned the minimum \$36 per hour in a week. Moreover, the requirement of a \$74,880 salary and a guarantee of \$36 per hour exceeded what many employers could afford to pay for lower-level exempt jobs, particularly in less-populated regions.

Under the new California law, salaried exempt computer professionals may be paid a fixed salary of \$6,250 per month (\$75,000 per year). There is no requirement to guarantee \$36 per hour for all hours worked, i.e., hours in excess of 40 in a week. While the law makes a dramatic improvement, in our opinion it remains flawed. For example, there does not appear to be any compelling reason why the minimum salary for exempt computer professionals is \$75,000, while the minimum salary for all other professionals (including, but not limited to, doctors, lawyers, accountants, engineers, architects) is \$33,280.

The new law provides that, on October 1 of each year, the California Division of Labor Statistics and Research will adjust the minimum compensation level for exempt computer professionals based upon the consumer price index. The Division has already announced

that, effective January 1, 2009, the minimum hourly rate will increase to \$37.94 per hour, the minimum annual salary will increase to \$79,050, and the minimum monthly salary will increase to \$6,587.50.

As to employees outside of the state of California, employers should review exempt classifications under both federal law and the law of the state in which the employee works. Under federal law, in addition to job duty requirements similar to those in California, employers must provide exempt computer professionals with compensation of either: (a) \$27.63 per hour; or, (b) salary of \$23,660 annually.

In addition to the compensation requirements identified above, California imposes strict job duty requirements for the computer professional exemption. The most common mistake employers make is to misapply the duties test by treating ineligible employees as exempt. The exemption applies only if the employee “is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, or software engineering,” and is primarily engaged in performing certain types of job duties defined by the law. The law provides that a “job title shall not be determinative of the applicability” of the exemption. The exemption expressly does not apply to entry-level positions, employees who do not work independently and without close supervision, employees who use computers for manufacture, repair or maintenance of computer hardware or related equipment, or many technical writers. Employers should consult with legal counsel regarding whether particular positions qualify for exempt status under applicable legal rulings.

Assembly Bill 10 provides an excellent opportunity for employers to review their exempt classifications for compliance with both the compensation and duties requirements. Plaintiffs’ lawyers continue to file a large number of overtime class action lawsuits, and exploit employers’ misapplication of the computer professional exemption (particularly the duties test). An ounce of prevention could be worth a pound of cure to ensure that your company does not experience such costly litigation.

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