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## **CALIFORNIA CHANGES OVERTIME EXEMPTION LAWS FOR COMPUTER PROFESSIONALS**

California Governor Arnold Schwarzenegger (R) recently signed into law a bill (AB 10) that changes overtime exemption requirements for computer professionals. Effective September 30, 2008, the law amended section 515.5 of the California Labor Code and addresses both employee compensation and employee duties.

### **1. New Law Eases Employers' Burden to Monitor Compensation**

Before AB 10 was enacted, computer professionals were exempt from overtime laws only if they were compensated at least \$36 per hour. Specifically, the prior law required:

The employee's hourly rate of pay is no less than thirty-six dollars (\$36.00), or the annualized full-time salary equivalent of that rate, provided that all other requirements of this section are met and that in each workweek the employee receives not less than thirty-six dollars (\$36.00) per hour worked.

This forced employers to monitor employee hours and compensation to ensure that employees received an average hourly rate of no less than \$36. The law's ambiguous language created liability issues for employers. Plaintiffs' lawyers contended that the exemption was inapplicable—and thereby lost for the entire year—if, for any given week during the year, the employee was not compensated at an average hourly rate of at least \$36.

AB 10 helps resolve these issues. Now, a computer professional employee is exempt from overtime laws if compensated with an annual salary of \$75,000 or more, at a rate of not less than \$6,250 per month paid at least once a month. Therefore, so long as the employee is compensated at least \$75,000 per year, the employee's average hourly rate is irrelevant. Of course, employers still have the option of compensating these employees on a per hour basis while maintaining exempt status, if the employee's average hourly rate does not fall below \$36.

### **2. Change to Employee Duties Provision Means More Qualify for Exemption**

To qualify for overtime exemption status, employees must also satisfy the duties requirement. Before AB 10, this required the following:

1. The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment, and the employee is primarily engaged in duties that consist of one or more of the following:

(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

(B) The 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) The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

2. The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, **and** software engineering. A job title shall not be determinative of the applicability of this exemption.

(emphasis added).

These requirements remain unchanged with one notable exception: the new rule only requires that the employee be skilled in “computer systems analysis, programming, **OR** software engineering.” By substituting the word “or” for “and,” the new requirement encompasses a wider range of individuals. Consequently, employers may find that more of their computer professional employees are exempt from overtime laws.

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