



One Minute Memo™

California Governor Signs New Law Establishing That Computer Professionals With a Salary of \$75,000 or More Are Not Entitled to Overtime

On September 30, 2008, California Governor Arnold Schwarzenegger signed into law urgency legislation amending the overtime exemption requirements for computer professionals in Section 515.5 of the Labor Code. The changes to Section 515.5 expand the existing exemption to certain employees in the computer field making not less than \$75,000 in salary per year and at least \$6,250 per month.

Under the new version of the statute, a computer professional that meets the criteria for the exemption and is paid \$75,000 or more in salary generally will be exempt from overtime.

The Prior Version of Labor Code Section 515.5

The prior version of Labor Code Section 515.5 exempted certain highly skilled computer professionals from overtime, if their work duties met the criteria set forth in the statute and they earned at least \$36 per hour in each workweek of the year, or an annualized full-time salary equivalent to that rate. On the first of October each year the Division of Labor Statistics and Research (DLSR) adjusted the hourly rate in accordance with the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

The New Version of Labor Code Section 515.5

The new version of Section 515.5 extends the overtime exemption to computer professionals as specified under existing law, if the employee is paid on a salary basis and earns not less than \$75,000 per year for full time employment, and is paid at least once per month in an amount not less than \$6,250. The DLSR now will adjust both the hourly rate and the salary level each year in accordance with the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

Why The Law Is Being Revised

California businesses in the high tech sector pushed for a revision of the statute after facing class action lawsuits by employees who calculated their annualized pay as less than the minimum hourly rate of pay required under the prior version of the law. Under the prior version of the statute, the annualized full-time salary equivalent was \$74,880 for an employee

working 40 hours per week (\$36 multiplied by 40 hours per week multiplied by 52 weeks per year). Computer professionals bringing lawsuits against high tech companies argued that, based on the wording of the prior version of the law, the annualized full-time salary equivalent increased if an employee worked more than 40 hours per week. They argued that the salary equivalent was, for example, \$93,600 for an employee working 50 hours, or \$112,320 for an employee working 60 hours per week. They also argued that the overtime exemption did not apply if a computer professional worked above the annualized minimum threshold even for just one week. Thus, if a computer professional was paid \$75,000 in salary, and worked more than 40 hours during only one week of the year, the argument was that the overtime exemption was lost for the whole year because the employee had not received the equivalent of \$36 per hour “in each workweek.”

Employers complained that the prior version of the statute created potential legal claims of tens of thousands of dollars per employee, a risk they would not face in any other state. They argued that the law should be revised to include a set salary threshold in addition to the hourly rate of pay threshold. The matter was submitted on an urgent basis to meet the October 1, 2008, deadline for review and adjustment of salaries and pay rates by the DLSR.

What The Revised Law Means For Employers

Under the revised statute, computer professionals paid \$75,000 or more in salary qualify for exempt status. However, similar to the executive, administrative and professional exemptions, the employee must be paid on a true “salary basis” for the exemption to apply. This means that, with limited exceptions, employers generally must pay exempt employees their full salary for any week in which they perform any work (regardless of the number of hours or days actually worked).

This amendment to Section 515.5 does away with the argument that the annual salary requirements shift upward the more hours a computer professional works per week. Computer professionals who earn \$75,000 or more now are exempt from overtime requirements, assuming the employees at issue otherwise meet the requirements for the exemption. This provides needed relief and certainty to employers that employ computer professionals who work more than 40 hours per week.

For more information, please contact the Seyfarth attorney with whom you work, or any Labor & Employment attorney on our website (www.seyfarth.com/laborandemployment).



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