



It Ain't Over Till It's Over – California Bill Would Increase Overtime Exemption Salary Threshold

Insights

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Employers nationwide breathed a collective sigh of relief when a federal district court judge in Texas enjoined the U.S. Department of Labor's (USDOL's) implementation of new minimum salary threshold requirements for the executive, administrative and professional overtime exemptions under federal law. However, that respite may be short-lived for employers here in California. Legislation just introduced in the California Legislature would raise the salary thresholds for these overtime exemptions under California law to the same levels that were proposed by the Obama administration.

Quick Review of the USDOL's Overtime Rule

Last year, the USDOL unveiled revised regulations that moved up the minimum salary threshold for "white collar" exemptions under the Fair Labor Standards Act (FLSA). The FLSA is the primary federal wage and hour law. The revised regulations provided that the minimum salary threshold necessary in order to characterize an employee performing the requisite work as exempt would have increased from \$455 to \$913 per week, which annualizes to \$47,476 (up from \$23,660 per year). Also, this amount would have been "updated" every three years (meaning that it would have likely increased with each update) with the first update scheduled for January 1, 2020.

Comparison to California Law

California's "white collar" exemptions require an exempt employee, in addition to performing exempt duties, to earn a monthly salary equivalent to not less than two times the state minimum wage. California's current minimum wage (for employers with 26 or more employees) is \$10.50 per hour. Therefore, an exempt employee must earn a salary equivalent to \$43,680 annually. (For employers with 25 employees or less, the current minimum wage is \$10.00 per hour – so the exempt salary threshold is \$41,600 annually).

Therefore, had the USDOL rule gone through, California's exempt salary threshold would have been less than the federal threshold – meaning California employers would have had to increase salary levels in order to maintain the overtime exemption status. However, California's minimum wage is scheduled to increase in a series of steps, ultimately to \$15 per hour. Therefore, eventually (by 2019 for employers with 26 or more employees) the salary threshold under California law would have exceeded the proposed federal level.

Federal Court Puts the Brakes on USDOL Regulation

Shortly before the Thanksgiving holiday last year, and in response to a series of legal challenges brought by a group of state attorneys general and business associations, a federal district court judge in Texas granted a preliminary injunction blocking the rule from going into effect just days before the December 1 effective date. Judge Amos Mazzant stated that it was improper for the USDOL to adopt a salary test that categorically excludes a substantial number of workers who meet the exemptions' duties-related requirements.

Election of President Trump Casts Doubt on Future of USDOL Proposal

President Trump's election cast doubt on the future of the USDOL rule. While the Obama administration USDOL appealed the district court's preliminary injunction, the Trump administration asked for further time to consider its course of action. Some have speculated that a Trump USDOL would drop the appeal altogether. Others have predicted Trump would direct his USDOL to commence a new rulemaking process – perhaps with a lower salary threshold and eliminating the three-year update.

This uncertainty has been further complicated by the fact that we still don't have a Secretary of Labor. At nominee Alexander Acosta's March 22 appearance before the Senate's Health, Education, Labor & Pensions Committee, he was asked several questions about the proposed overtime rule. Several senators pressed Mr. Acosta to commit that he would defend those changes in the ongoing Texas litigation. He was unwilling to make that commitment for now, saying that, among other things, he must first evaluate the legal merits of the lower court's ruling that the U.S. Department of Labor has no authority to impose such a salary requirement.

Mr. Acosta also declined to take a specific position on the appropriate amount of any salary threshold. He did express concerns about the possible adverse effects of a \$913-a-week figure upon aspects of the nation's economy, particularly in lower-wage areas. Doubling the \$455-a-week level creates a "stress on the system," as he put it. However, he also said he finds it "troubling" that the salary threshold had not been adjusted since 2004, and he voiced his concern about the long periods of time that tend to pass between re-evaluations of the proper level. He expressed his intention to look at this matter "very closely." One exchange seemed to suggest that Mr. Acosta would at least be open to considering a figure in the \$635-a-week range (which would annualize to about \$33,000).

Future resolution on USDOL's position on the issue will likely not come until after Acosta is confirmed, which may occur in the coming days and weeks.

California Enters the Fray – Assembly Bill 1565

Assembly Bill 1565 by Assemblymember Tony Thurmond (D-Richmond) would require that an executive, administrative, or professional employee is exempt from overtime only if they perform exempt work and earn a monthly salary equivalent to \$3,956 (or \$47,472 annually) or twice the state minimum wage, whichever is higher. It was anticipated that labor advocates in California would advance such a proposal – which can largely be seen as a response to actions by the Trump administration viewed by labor as hostile to workers.

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It remains to be seen whether the Legislature will enact this legislation as written, or will modify it, and whether the governor will sign it if it remains in its current form. As the great sage Yogi Berra famously stated, "It ain't over till it's over!" An increased salary threshold may still occur in California regardless of whether the USDOL takes any further action.

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