



## Some States Forge Ahead On Salary Thresholds

Insights

6.21.17

Since last November, employers have waited with bated breath for a resolution of the status of the U.S. Department of Labor's salary-threshold increase for an executive, administrative, professional, or derivative "white collar" exemption under the federal Fair Labor Standards Act's Section 13(a)(1). To date, there have been no substantive developments with respect to the Texas court's preliminary injunction.

Whatever the future of that litigation might be, there is some reason to anticipate that ultimately the \$455-per-week threshold will increase by at least some amount. U.S. Labor Secretary Acosta has now said that the Labor Department will soon ask for more input on the changes that were published last May. Rather than hold their breath, many employers are leveraging this time of uncertainty by deciding what they will do when matters become clear, if not sooner.

But more to the point, some employers are already having to respond to salary increases under analogous exemptions provided by a number of state wage-hour laws.

### Taking Their Own Steps

Some states have moved forward with increasing the salary thresholds for analogous exemptions under their own laws. These jurisdictions tend to use one of three general approaches:

- *Setting a specific level.* For example, New York has instituted an elaborate system establishing salary thresholds ranging from \$727.50 to \$825.00 per week (which will increase again on December 31, 2017) depending upon the location and size of the employer. Similarly, Iowa's salary thresholds range from \$310.00 to \$500.00 per week, varying by the particular white-collar exemption invoked and/or the application of a "long" or "short" duties test (an approach that was eliminated from the FLSA-related regulations in 2004). Other states specify a dollar amount, such as Kentucky (currently at \$455 per week), an increase in which would require further action.
- *Thresholds based upon a state's minimum wage.* Other states have increased the salary threshold in conjunction with the state's minimum wage. For instance, California has raised its floor to \$840 per week based upon its current minimum wage of \$10.50 per hour.

- *Tying the amount to the figure set by USDOL.* Several states' minimum salaries are set with reference to the federal threshold, but this is done via a variety of phrases that must be read carefully. Some even refer explicitly to the USDOL-established amount as of a particular point in time or based upon action taken on the federal figure. As an illustration, Illinois' provision currently specifies a salary amount of at least the one "proposed in the Federal Register on March 31, 2003, or a greater amount of salary as may be adopted by the United States Department of Labor."

### **The Bottom Line**

Employers should not become so focused upon developments affecting the FLSA "white collar" salary test that they fail to take into account any changes in salary thresholds prescribed under analogous exemptions from applicable state laws.

And where *both* the FLSA exemptions *and* state-law ones are concerned, it is important to continue to ensure *now* that all other exemption requirements are also met as to each employee for whom management asserts that status. Employers need not justify a decision to treat an employee as non-exempt, even if he or she could lawfully be treated as exempt. But it would not be wise to wait until there is further salary-related clarity before one evaluates whether there are any potential vulnerabilities having to do with an exemption's additional requirements.