

WSGR ALERT

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SALARY REQUIREMENT FOR CALIFORNIA COMPUTER PROFESSIONALS TO INCREASE TO \$81,026.25 ON JANUARY 1, 2012

Today, the California Department of Industrial Relations (DIR) announced that the minimum compensation required to qualify for the state's computer-professional exemption in 2012 will increase by 2.5% percent from the 2011 rate.¹ Beginning January 1, 2012, an employee must be paid a salary of at least \$81,026.25 annually (\$6,752.19 monthly) to qualify for the exemption.²

Computer-Professional Exemption Salary Requirement

The minimum salary and hourly rate requirements for the computer-professional exemption under Labor Code Section 515.5 are adjusted annually for inflation according to the Consumer Price Index (CPI).^{3,4} In 2008, the compensation requirement for the computer-professional exemption increased by 5.4 percent (effective January 1, 2009). In 2009, the CPI *decreased* by 1.4 percent, but despite the decrease, the DIR maintained the then-existing compensation rate for the computer-professional exemption (effective January 1, 2010).⁵ In 2010, the CPI increased

by 1.1 percent, but the DIR left the compensation requirement for the computer-professional exemption unchanged from the prior year (effective January 1, 2011). Despite the fact that the CPI had increased by 1.1 percent from the prior year, the CPI still remained below 2008 levels. Therefore, the CPI increase was not a net "percentage increase," as required by the statute.⁶

While the increase in the CPI is a positive sign for the economy, it will have an impact on the bottom line of technology companies and other employers of computer-professionals. Employers have until January 1, 2012, to ensure that their computer professionals meet the new minimum salary requirement. Accordingly, Wilson Sonsini Goodrich & Rosati recommends that employers promptly start planning to make any appropriate salary adjustments, and to make changes to employee pay stubs, bonus plans, benefits, and any other incidents of employment that may be affected by the salary increase. Employers also may want to

consider the content and timing of any announcement to employees regarding salary changes, and to adjust recruiting and other company materials that reference compensation. In addition, employers will need to work with their payroll providers to ensure that any new pay rates go into effect no later than the start of the new year.

Computer-Professional Exemption Duties Requirement

In addition to the compensation requirements described above, the computer-professional exemption continues to include duties-based requirements as set forth in Labor Code Section 515.5. To qualify for the exemption, the employee must spend 50 percent or more of his or her time engaging in one or more of the following duties:

- a) Applying systems-analysis techniques and procedures, including consulting with users, to determine hardware, software, or system-functional specifications

¹ The compensation requirement for the computer-professional exemption from 2009 to 2011 was an annual salary of \$79,050 (or \$6,587.50 monthly).

² If the computer professional is paid on an hourly basis, the minimum hourly rate to qualify for the exemption will increase to \$38.89. Please note that computer professionals compensated on an hourly basis must be paid for each hour worked even though no overtime premium applies. For example, if a computer professional is compensated at an hourly rate of \$38.89 and he or she works 45 hours in a week, the employee would need to be paid \$1,750.05 for that week (\$38.89 per hour x 45 hours).

³ Employers can check the following website each year to determine the applicable rate: <http://www.dir.ca.gov/dlsr/ComputerSoftware.pdf>.

⁴ For additional information on how the CPI affects the computer-professional salary requirement and other issues regarding the exemption, please reference the following WSGR Alerts: Update on California's Computer-Professional Exemption; New CPI Announced; California Legislature Amends Computer-Professional Exemption to Ease Compensation and Timekeeping Burden on Technology Employers; and Class Action Settlements and Passage of AB 1093 Focus Attention on Classification of Computer Professionals.

⁵ When it was announced that the CPI had decreased, WSGR promoted the position that the computer-professional exemption compensation requirement also should decrease accordingly. The DIR, however, interpreted the statute to only apply to *increases* in the CPI, and thus the compensation requirement remained unchanged from the prior year. For more information, please see the following WSGR Alert from November 2009: Poor Economy Results in Maintenance of Status Quo for Compensation Rate of Exempt Computer Professionals.

⁶ For more information, please see the following WSGR Alert from November 2010: California Regulatory Authority Announces Compensation Rate of Exempt Computer Professionals to Remain Unchanged for 2011.

Continued on page 2...

Salary Requirement . . .

Continued from page 1...

- b) Designing, developing, documenting, analyzing, creating, testing, or modifying computer systems or programs, including prototypes, based on and related to user or system-design specifications
- c) Documenting, testing, creating, or modifying computer programs related to the design of software or hardware for computer operating systems

In addition, an employee's job duties must be intellectual or creative and require the exercise of discretion and independent judgment. The employee also must be skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

There are certain specific statutory exclusions that employers should review before relying on the California computer-professional exemption. For instance, technical writers and

certain employees making use of computer-aided design (CAD) software who are not engaged in computer systems analysis or programming occupations are expressly excluded from the exemption.

While other exemptions also may be available to computer professionals depending on the specific criteria of each exemption, ensuring that eligible employees qualify for the computer-professional exemption can greatly reduce the risk of litigation related to wage and hour claims, including claims for unpaid wages, overtime, and missed meal and rest periods. Wilson Sonsini Goodrich & Rosati is able to assist employers in undertaking audits to address the classification of their employees as exempt or non-exempt for overtime purposes in order to comply with applicable federal and state law. For more information on the computer-professional exemption or other related matters, please contact a member of the firm's employment litigation practice.



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