



Coffee Club

Don't Lose Sight of Duties Required to Meet Exempt Status



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Introduction


Welcome to the AALRR monthly "Coffee Club" Webinar Series. Our series will focus on labor and employment law issues facing California employers and will provide you with a unique understanding and perspective on a variety of interesting and timely topics.

Join us the first Tuesday of every month @ 10:00 am for a new and exciting topic.

Today, we will be discussing *Don't Lose Sight of Duties Required to Meet Exempt*


Next Month, *Labor Law Trends Effecting Your Workforce*




1

Disclaimer | Housekeeping


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


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2



Exemptions







Legal Challenges to the FLSA

- On November 22, 2016, a federal Court in the Eastern District of Texas halted implementation of the Department of Labor's ("DOL") rule that amended the salary basis test for overtime exemptions that were scheduled to take effect December 1, 2016.
 - *Nevada v. DOL*, E.D. Tex., No. 4:16-cv-00731 (11/22/16).
- The Court granted a preliminary injunction, which temporarily delays the DOL's rule from taking effect nationwide.



Legal Challenges to the FLSA

- The DOL's final rule regarding the salary basis test was issued in May 2016.
- Shortly thereafter, 21 states sued the DOL arguing that they exceeded their authority in setting a salary threshold that more than doubled previous levels.
- The U.S. Chamber of Commerce and other business organizations filed a separate lawsuit, which was consolidated with the *Nevada v. DOL* case.
- The Court in Texas ruled that the DOL's dramatic increase to the salary basis threshold created "*essentially a de facto salary-only test*," which exceeded the authority granted to the DOL to interpret the FLSA.



Legal Challenges to the FLSA

- The Court also found that the higher salary threshold effectively eliminated many employees from exempt status who conducted exempt duties, but failed to qualify solely due to the salary earned.
- Also up for review and determination by the court, is whether the DOL overstepped its authority in creating an automatic increase in the salary basis test every three years.
 - The first increase was set to take effect on January 1, 2020.

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6

"White Collar Exemptions"

- California law and the FLSA provide an exemption from overtime pay for the following employees:
 - Executive
 - Administrative
 - Professional
- Paid on a salary basis



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7

Salary Basis

- California: A monthly salary that is not less than two (2) times the state minimum wage for full-time employment.
 - Full time employment is defined as 40 hours per week
 - Currently \$43,680 as of January 1, 2017
- Federal: Not less than \$455 per week
 - Was set to increase to \$913 per week on December 1, 2016 equal to \$47,476 annually
 - On hold due to federal court ruling in Texas

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8

Tips to Remember to Stay Compliant



COMPLIANCE

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Executive Exemption

- Duties and responsibilities involve the management of the enterprise or of a customarily recognized department or subdivision;
- Customarily and regularly directs the work of two or more other employees;
- Authority to hire or fire other employees or whose suggestions and recommendations as to hiring, firing, advancement, promotion or other change of status of other employees are given particular weight;
- Customarily and regularly exercises discretion and independent judgment; and
- Primarily engaged in exempt duties.

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Administrative Exemption

- Duties and responsibilities involve the performance of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers;
- Regularly and directly assists a proprietor, or a bona fide executive or administrative exempt employee or performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge or executes under only general supervision special assignments and tasks; and
- Primarily engaged in exempt duties.

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Professional Exemption

- Licensed or certified by the State of California and is primarily engaged in the practice of one of the following:
 - Law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting
- Primarily engaged in an occupation commonly recognized as a learned or artistic profession
- Customarily and regularly exercises discretion and independent judgment

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12

Outside Sales Employees

- Primary duty must be making sales, or obtaining orders or contracts for which consideration will be paid by the client or customer
- Employee must be customarily and regularly engaged away from employer's place of business (more than 50% of the time)
- Employee's home is considered an extension of the office
- Exempt from both overtime and minimum wage
- Not affected by increase to salary basis test

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13

Thank You

For questions or comments, please contact:

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