

## WSGR ALERT

NOVEMBER 2010

# CALIFORNIA REGULATORY AUTHORITY ANNOUNCES COMPENSATION RATE OF EXEMPT COMPUTER PROFESSIONALS TO REMAIN UNCHANGED FOR 2011

The California Department of Industrial Relations (DIR) has announced that the minimum compensation required to qualify for the state's computer-professional exemption in 2011 will remain unchanged from that of 2010. Therefore, in 2011, an employee must be paid a salary of at least \$79,050 annually (\$6,587.50 monthly) to qualify for the computer-professional exemption in California.<sup>1</sup> The minimum hourly rate and salary requirements for the computer-professional exemption under Labor Code Section 515.5 are adjusted annually for inflation according to the Consumer Price Index (CPI).<sup>2</sup>

This year, the CPI increased by 1.1 percent, in contrast to a decrease of 1.4 percent from 2008 to 2009. Despite this increase, the DIR did not increase the minimum statutory rates that an exempt computer professional must be paid because the CPI remains below 2008 levels; thus, there has been no net "percentage increase."<sup>3</sup>

In addition to meeting the compensation requirements described above, the computer-

professional exemption continues to have 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; 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; or 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. Lastly, the employee must be highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

Please note that there are certain specific 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 excluded from the exemption.

Wilson Sonsini Goodrich & Rosati is able to assist employers in undertaking audits to address classification of their employees as exempt or non-exempt for overtime purposes in order to comply with federal and applicable state law.<sup>4</sup> For more information on the computer-professional exemption or other related matters, please contact Fred Alvarez, Rico Rosales, Kristen Garcia Dumont, Alicia Farquhar, Elizabeth Tippet, Lauren Phillips, or any other member of Wilson Sonsini Goodrich & Rosati's employment law practice.

<sup>1</sup> If the computer-professional employee is paid on an hourly basis, the minimum hourly rate required to qualify for the computer-professional exemption also will remain unchanged at \$37.94. 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 \$60.00 per hour and he or she works 45 hours in a week, the employee would need to be paid \$2,700 for that week (\$60.00 per hour x 45 hours).

<sup>2</sup> Employers can check the following website each year to determine the applicable rate: <http://www.dir.ca.gov/dlsr/ComputerSoftware.pdf>.

<sup>3</sup> For additional information on how the CPI affects the computer-professional salary requirement and other issues regarding the computer-professional exemption, please see the following WSGR Alerts: Poor Economy Results in Maintenance of Status Quo for Compensation Rate of Exempt Computer Professionals, 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.

<sup>4</sup> Wilson Sonsini Goodrich & Rosati also can assist employers in undertaking wage-compliance audits related to pay equity issues, which have become the focus of many wage and hour class actions and is of particular concern for positions traditionally occupied by a specific gender.

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