What California Employers Need to Know About the New Federal Overtime Rule

Until just recently, many California employers probably hadn’t given much thought to the federal Fair Labor Standards Act (FLSA) and its overtime requirements because there was no reason to. Federal overtime requirements did not apply to California employees because California overtime law was stricter in both the duties and salary tests.

But that all changed on May 18, 2016, when the federal Department of Labor (DOL) announced its final rule updating the federal overtime regulations. The federal overtime rule is effective December 1, 2016.

The federal salary requirement for certain exemptions is now higher than California’s salary requirement, which means that federal overtime law now matters to California employers. This requirement applies to the “white collar” exemptions — executive, professional and administrative.

California employers must understand how the federal overtime law affects California employees and take steps to ensure compliance with both state and federal law.

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California and Federal Overtime Laws

California and federal law exempt certain employees from wage-and-hour requirements, including overtime pay. When state and federal overtime laws apply, employers must follow whichever is more protective of employees.

Under California and federal law, an employee must meet a duties test and a salary test to be classified as exempt; i.e., the employee must perform exempt work and be paid a minimum salary, or the employee cannot be classified as exempt.

Prior to the new federal overtime rule, California employers followed California’s duties and salary tests because both were more protective of employees than their federal counterparts. Under California law:

- Exempt employees must be “primarily engaged” in exempt duties, which means employees must spend more than 50 percent of their time performing exempt duties; and
- Exempt employees must be paid a salary of at least two times the state minimum wage (currently $10 per hour), which equates to an annual salary of $41,600.

The federal duties test is less protective because it requires only that an employee’s primary duty be an exempt duty. Until now, the federal salary test was also less protective — an employee had to be paid only $455 per week, or $23,660 per year to be exempt.

The New Federal Overtime Rule

In 2014, President Obama signed a Presidential Memorandum that directed the federal DOL to update the federal overtime regulations for executive, administrative and professional workers (white collar employees). The DOL published a Notice...continued on page 6

Click here
The El Centro Chamber Foundation invites you to attend the Inaugural Imperial Valley Girls ROCK! Awards Ceremony.

Thursday, September 8, 2016
5:30 - 7:30 PM
Imperial Palms Resort

$35 Per Person / $250 Table of 8
Sponsorship Opportunities Available

For more information call Anthony at (760) 352-3681 or email anthony@elcentrochamber.com

The El Centro Chamber Foundation
As the Chamber wraps up it 2015-2016 year and embarks on its program of work for the 2016-17 year I want to thank-you, the Chamber members, for letting me have the honor to serve your Chamber as President this year. It has been a very rewarding experience.

What I have learned most this year is just how much everyone’s contribution to the Chamber means and how necessary these contributions are for the Chamber to complete its mission to be the voice of business to government, to promote the greater El Centro area, and to build a strong local economy. These contributions come in many different ways: some are financial contributions, some are contributions of service, and some are contributions of materials. All of these are essential for the Chamber to carry out its role.

The Chambers regular members and the President’s Circle members are the largest financial contributors to the Chamber. In fact the dues paid by Chamber members represents virtually all of the Chamber’s revenue. Many people forget that the Chamber does not receive any funding except for the financial dues support of its members. So to everyone who is a Chamber member at any level, thank you for being a member.

Aside from financial contributions, the amount of volunteer effort that the Chamber receives from its members and the community is astonishing. The Chamber’s board members, the volunteer committee members, the Ambassadors, volunteers and service club members who help at Chamber events, mixer host businesses, all make the Chamber work. The amount of volunteer time that is given by our community to achieve the goals of the Chamber is phenomenal. It has been a wonderful experience to see so many people work together to make our greater El Centro area a better and more prosperous community.

As Les Smith comes back on board as Chamber President for 2016-2017 I am confident that the Chamber will have a very good year. El Centro has some challenges ahead of it over the next couple of years and I am confident that the Chamber’s leadership team will work to express the concerns of the business community regarding these challenges. The city has recently discovered that it does not have enough revenue to meet its budget obligations, a problem primarily driven by the richness of city employee retirement packages. To address this the city council has voted to put a sales tax increase on the November ballot. I am hoping that the city can structure a revenue reform package—to include a decrease in commercial development fees to bring El Centro in line with neighboring cities— rather than simply and only a sales tax increase. After all, if El Centro can increase commercial development, wouldn’t that by itself increase sales within the city and thus create additional sales tax revenue?

The November sales tax increase vote could be a tough sell to El Centro’s voters. On the one hand I see how the city hopes to capitalize on the significant amount of money spent by Mexicali and other out of town shoppers who come to El Centro; however, sales taxes adversely effect lower income consumers more than any other group, and we all know the economic profile of the majority of El Centro’s population. In addition, as one El Centro merchant said to me: “No tax increase has ever been good for business.” One other thing too on this issue, while the city is facing its increase in personnel cost, so too have businesses had to re-balance their own budgets due to the recent increase in minimum wage. These issues, and others, will make it necessary for the city council to really reach out to their constituents for their sales tax measure to be successful. While the city council has already voted unanimously to ask the voters for this sales tax increase, I am hoping that in the months between now and November the city will put a plan together—a “Contract with El Centro” if you will— to make the city’s proposal a win-win-win for the city, for El Centro businesses, and for the community as a whole.

It has been a pleasure serving as your Chamber President.

Thank-you.
CalChamber Opposition Helps Stop Job Killer Leave Mandate

A job killer bill that would have overwhelmed small businesses with administering a new protected leave of absence and subjected them to threats of costly litigation for any alleged violations, failed to pass the Assembly Labor and Employment Committee on June 22.

SB 1166 (Jackson; D-Santa Barbara) would have unduly burdened and increased costs of small employers with as few as 10 employees, as well as large employers with 50 or more employees, by requiring 12 weeks of protected employee leave for maternity or paternity leave.

SB 1166 labels an employer's failure to provide the 12-week leave of absence as an "unfair employment practice." This label is significant as it exposes an employer to costly litigation under the Fair Employment and Housing Act (FEHA). An employee who believes the employer did not provide the 12 weeks of protected leave, failed to return the employee to the same or comparable position, or did not maintain benefits while out on the 12 weeks of leave, could pursue a claim against the employer seeking compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney’s fees.

To the extent the new protected leave created by SB 1166 was interpreted or implemented in a manner different from the Family Medical Leave Act (FMLA) or California Family Rights Act (CFRA), it could also create the potential opportunity for an employee who works for large employers to receive more than 12 weeks of protected leave in a 12-month period, which is a concern Governor Edmund G. Brown Jr. raised in his veto of SB 406 (Jackson; D-Santa Barbara) last year.

“I agree that it’s important for a child to be with their parents and that they shouldn’t be put into day care at an early age,” CalChamber Policy Advocate Jennifer Barrera said in her committee testimony. “But at the same time, there has to be a balance with regards to the private business sector as well, so that we can continue to grow our economy.”

According to KQED, Hernandez said in a statement he had some disagreements with Jackson about this bill. And while he agrees parental leave is an important issue, he said small businesses are facing many new requirements “We’ve had some significant victories in recent years – increasing the minimum wage, passing paid sick days, and in other areas. In light of these new requirements, we need to look for balance,” he said. “I have concerns about the burdens that will be faced by employers with 10 or more employees in complying with this new leave requirement.”

Key Vote

SB 1166 failed to pass the Assembly Labor and Employment Committee on June 22, 2-1.

Ayes: McCarty (D-Sacramento), Thurmond (D-Richmond).

No: Patterson (R-Fresno).

Absent, Abstaining or Not Voting: R. Hernández (D-West Covina), Chu (D-San Jose), Linder (R-Corona), O’Donnell (D-Long Beach).
thank you
to all of you who “Came on Down” to the
110th Annual El Centro Area Chamber
Dinner Meeting & Silent Auction

The 2016 Duflock Award for Business Leader of the Year was presented to Mr. Cliff Caldwell of Pinney, Caldwell & Pace.

With 200 members in attendance, the 110th Annual Chamber Dinner Meeting was quite a success! The event was held on June 16th at the Imperial Palms Resort.

Thank you to our Dinner Sponsors: SDG&E and Imperial Palms Resort and Wine Sponsor: Rogers & Rogers Auto Group.

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Overtime Rule, continued

of Proposed Rulemaking (NPRM) in the Federal Register in July 2015, and invited comments on the proposed rule.

The DOL received more than 270,000 comments, many from employers and employer organizations that were concerned about the potential effects of the proposed rule, namely the proposal to more than double the salary requirement for white collar exemptions.

After much anticipation, the final rule was announced on May 18, 2016. The new rule more than doubles the salary requirement for exempt executive, administrative and professional employees from $455 per week to $913 per week ($47,476 annually for a full-time employee). The new rule provides for automatic increases to the salary test every three years, beginning January 1, 2020.

The new rule also increases the annual compensation requirement for the federal “highly compensated employees” (HCE) exemption, and amends the federal salary basis test to allow employers to use nondiscretionary bonuses and incentive payments to satisfy up to 10 percent of the new salary test.

The new rule does not change any other exemptions, such as the sales exemptions, and does not affect the federal duties test.

The federal salary test does not apply to certain professionals: teachers (if their primary duty is teaching in an educational establishment), and licensed lawyers and doctors (bona fide practitioners of law or medicine). Under federal law, these employees do not have to meet the salary test to be classified as exempt under the professional exemption.

What Does This Mean for California Employers?

The changes to the federal overtime rule mean that the federal salary test is now relevant to California employers. California employers will need to follow:

- The federal salary test, because it is now more protective than California’s test.
- The California duties test, because it is still more protective of employees.

In short, if you want your executive, administrative and professional employees to continue to be exempt under California and federal law, those employees must meet the new, higher federal salary test and California’s existing, more stringent duties test.

Remember that California’s minimum wage will increase each year until it reaches $15 per hour in 2022 (there is a one-year implementation delay for companies with 25 or fewer employees). These increases will affect California’s salary test. As of January 2019, the California salary test will be greater than the federal test for companies with more than 26 employees. Depending on the amount of the first federal increase in January 2020, the California test may once again surpass the federal test for all employers.

For more information, see California Minimum Wage and California vs. FLSA Minimum Salary Thresholds Through 2023.

The change to the HCE exemption does not affect California employers because California does not recognize such an exemption. The change to the federal salary test to include the use of bonuses and incentive payments to account for up to 10 percent of the salary test also does not affect California employers because California does not allow such payments to be used to meet the salary test.

The federal salary test does not apply to teachers, lawyers or doctors. Those employees would still have to meet the California salary test to be exempt.

What Employers Can Do

First, you should identify which employees are affected by the new federal rule, which are your exempt executive, administrative and professional employees who currently earn less than the new federal salary test of $913 per week ($47,476 annually for a full-time employee). Employees classified as exempt under the sales and computer professional exemptions are not affected by the new rule.

Second, you must decide whether you want to continue to treat these employees as exempt, or reclassify them as nonexempt. If you want the employees to remain exempt under California and federal law, you will need to increase their salaries to meet the new federal requirement of $913 per week.

Confirm Exempt Status Before Proceeding With Salary Increases

Before you consider increasing salaries, you should take this opportunity to review and confirm the exempt status of the affected employees. Carefully review the affected employees’ duties and how they spend their work time. Do the employees meet the requirements of the executive, administrative or professional exemptions?

Are they actually spending more than 50 percent of their time on exempt duties? If the employees do not meet California’s strict duties test, the employees are not properly classified as exempt. For more information, see Exempt vs. Nonexempt Employees.

Increase Salaries to Maintain Exempt Status

Consider several factors when deciding whether to increase salaries to maintain exempt status. One important factor is the cost of the salary increases versus the cost of potential overtime if the employees lose their exempt status and must be paid overtime. The potential cost of overtime may be difficult to quantify because you may not...continued on page 7
know how many hours the employees typically work in a day or week.

Even though you may not have time records for your exempt employees, there may be other ways to gauge their hours, such as examining computer login or security access records. Also consider the extent to which you will be able to control overtime, such as through scheduling and staffing, if the employees are reclassified.

Another factor to consider is the potential ripple effect that the salary increases may have on other employees. If you raise the salaries of the affected employees, will you also need to raise the salaries of those employees just above the new federal level? Will you need to implement corresponding increases to the salaries of the employees’ managers and supervisors to maintain a difference in salary between the managers/supervisors and their subordinates?

The new federal salary test goes into effect Thursday, December 1, 2016. If you decide to increase salaries for some employees to meet the new salary test, those employees must be paid the required salary for the entire workweek, which may mean you need to increase salaries just prior to December 1.

Reclassify Employees as Nonexempt

The other option is to reclassify the affected employees as nonexempt, which eliminates the need to increase their salaries to meet the higher federal salary test.

If you decide to reclassify the employees, take care to communicate the decision and its implications to the affected employees. Consider how the currently exempt employees will feel about being reclassified as nonexempt. Some may see this as a demotion or a negative change in status, and it could affect employee morale.

Training will also be critical for any reclassification. You should train the affected employees on the wage-and-hour requirements that will apply to them once they are reclassified as nonexempt. Remember that some of these employees may have never punched a clock or worried about taking timely meal breaks, so proper training is key. You may also want to train the affected employees’ supervisors if they are not experienced in supervising nonexempt employees.

Issues to cover in the training include:

- Proper timekeeping practices;
- Overtime requirements, including requiring prior approval for overtime;
- Meal- and rest-break rules; and
- Prohibition of off-the-clock work, including responding to email, texts and phone calls outside of working hours.

Next Steps

Use the Checklist for Complying with the Federal Overtime Rule to help you prepare for the change to the federal salary test.
Richard Morales, Ambassador of the Year with President David Tyler

2016 Annual Dinner Guests

Diana Moreno and Carla Kuhns

2016 Annual Dinner Guests

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www.elcentrochamber.com
Thank you to all that have renewed their membership in April, May and June!

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News & Events

June 25- August 14
SeaWorld's Summer Vibes - This summer SeaWorld turns up the heat with a high-energy, family-friendly performance series featuring: Freelusion, Gazillion Bubbles and Fighting Gravity. Check seaworldsandiego.com for more details. Discounted tickets can be purchased on www.elcentrochamber.com click on Hot Deals.

June 30
Calexico Chamber of Commerce Annual Member Mixer & 2016 Lava Lamp Awards - Event takes place at the CD Cultural Arts Center in Calexico starting at 6pm. For information for reservations, contact the Calexico Chamber at (760) 357-1166.

June 30
El Centro Chamber Ribbon Cutting at A & A Cottage View Assisted Living - Join the Chamber on June 30th at 5 p.m. for a Ribbon Cutting ceremony during the GRAND OPENING Celebration of A&A Cottage View Assisted Living located at 103 S. Haskell Drive, El Centro. Come by, meet the staff, have some appetizers and tour the new facility.

July 1
Freedom Fest 2016 Gran Plaza Presents - Independence Day Celebration - Join the Gran Plaza Outlets for a spectacular fireworks show. Live music, food, beer, art walk and more starting at 5 pm. Contact Gran Plaza Outlets for more information.

July 4
Freedom Fest 2016 - Join KXO Radio, Imperial Chamber of Commerce at Imperial Valley College for Freedom Fest 2016 on Monday, July 4th. This year marks the 26th annual celebration of Freedom Fest. The festivities begin at 6pm with concessions booth, static displays, patriotic presentations, music & entertainment until the Fireworks show at 9:30pm. This community event is free to the public.

July 16
Wasp wU! Comedy Show - Comedy show with Headliner - Charles Sanchez, Featuring - Miguel Rojas. Hosted by - Jake Leos with Local Comedian - Chris Arellano. Age 21+, All you can drink (8:00pm-11:00pm) 9:00pm Showtime. Presale tickets - $35.00; At the door - $40.00 VIP Tables Available. Contact Barcelona Event Centers (760)750-0008 or (760)460-6088.

July 21
El Centro Chamber July Mixer - El Centro Chamber’s July Mixer will be held Thursday, July 21 from 5 p.m. to 7 p.m. This month’s mixer is being sponsored by Coldwell Banker the Wilkinson Team located at 1523 W. Main St., Ste. 111, El Centro. All El Centro Chamber members are encouraged to attend.

July 22

August 18
El Centro Chamber 2016 Co-op Mixer - Are you an El Centro Chamber Member who would like to host a mixer, but don’t have the adequate space or time to plan the event? We have your solution! Sign up to take part in our Annual Co-Op Mixer on August 18th! Visit our website to download your application or call the Chamber at 760-352-3681 for more information.

September 8
El Centro Chamber Foundation IMPERIAL VALLEY GIRLS ROCK!! – Do you know an Imperial Valley Girl who ROCKS!? Nominate her to be recognized by the El Centro Chamber Foundations at the Inaugural Imperial Valley Girls ROCK! Awards Ceremony & Scholarship Fundraiser. This award is to recognize Imperial Valley Girls (and Ladies) who strive toward the highest levels of personal and professional accomplishments, devote time and energy to their community in a meaningful way and serve as a role model for others. The El Centro Chamber Foundation offers this award as an opportunity to reward and recognize the efforts and contributions of Imperial Valley Girls who ROCK! Takes place at Imperial Palms Resort, 5:30- 7:30 pm. Contact the Chamber at (760) 352-3681 or register online at www.elcentrochamber.com.
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