Engage PEO Client Alert - California

Increased Exempt Salary Thresholds, Personnel Records Retention, Non-Disparagement Agreements

What's New: California increased the minimum annual salary for exempt employees, computer professionals, and licensed physicians and surgeons effective Jan. 1, 2022. Employers should review salaries to ensure compliance. Employers must now retain employee personnel records for four years instead of two years. Non-disparagement and severance agreements must include specific language regarding an employee's right to discuss conduct the employee has reason to believe is unlawful.

California Increases Salary Threshold

Exemptions from overtime in California are similar to the federal exemptions with a few important caveats. In addition to the requirement that they perform exempt duties more than 50 percent of their work time, California employees classified under the Executive, Administrative and Professional exemptions must earn a salary of no less than two times the state minimum wage for full-time employment. **The California minimum annual salary is based on the current state minimum wage, which increased on January 1, 2022**. The salary base increases are detailed in the chart below.

Base Salary Per Week for Exempt Executive, Administrative and Professional Employees		
Employer Size	**Effective Date**	**Rate of Pay**
Large employers (26 or more employees)	1/1/2022	$1,200 weekly ($62,400 annually)
Small employers (25 or fewer employees)	1/1/2022	$1,120 weekly ($58,240 annually)

In addition, the California Department of Industrial Relations (DIR) recently published the new salary minimums for employees classified as exempt Computer Professionals and licensed Physicians and Surgeons. Effective January 1, 2022, the minimum salary rate for exempt computer professionals increased to $8,679.16 per month ($104,149.81 annually) and the minimum salary rate for certain licensed physicians and surgeons increased to $3,642.80 per week ($189,425.60 annually).

Employers with employees in California should review compensation for their exempt employees to ensure that the appropriate minimum salary level is satisfied. If the salary level is not satisfied, the employer should consider increasing compensation to meet the salary threshold or reclassifying the employee as non-exempt. **Employers planning to change the wage or status of a California employee from exempt to non-exempt need to provide employees with a written Wage Notice (detailing the changes to compensation and other terms of employment) at least seven days in advance of those changes going into effect**. Employers may use the template form provided by the DIR. available to download online

Personnel Records Retention Extended to Four Years (SB 807) (eff. 1/1/22)

Employers' obligation to retain employee personnel records is extended to four years from the date the records were created, or the date the employment action was taken. Previously, employers were required to maintain these records for only two years.

Non-disparagement Agreements Must Include Specific Language Allowing Discussion of Unlawful Acts (SB 331) (eff. 1/1/22)

As discussed in our previous California Client Alert, SB 331 expands confidentiality restrictions in settlement agreements for claims of workplace discrimination. In addition to updating their settlement agreements, California employers who wish to have employees enter into non-disparagement agreements (including in severance agreements) must specifically include the following language to carve out an employee's right to discuss conduct the employee has reason to believe is unlawful: **"Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."**