



September 3, 2015

Mary Ziegler, Director
Division of Regulations, Legislation and Interpretation
Wage and Hour Division, Room S-3502
United States Department of Labor
200 Constitution Avenue NW
Washington DC 20210

Re: RIN#1235-AA11 – Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

The California State Association of Counties (CSAC) appreciates the opportunity to share our comments and concerns on the proposed regulations *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*.

CSAC represents all 58 counties in California before the State Legislature, administrative agencies and the federal government. The following comments are based upon the input provided by our member counties regarding the proposed rule to amend regulations under the Fair Labor Standards Act (FLSA) which seek to expand federal overtime pay protections by raising the minimum salary requirement to qualify for the white collar exemptions.

Increasing Salary Level for Exemptions

Increasing the salary level to an amount equal to the 40th percentile of earnings of median wages for full-time salaried workers is a significant change, and one that troubles counties. While counties understand the need for an update to keep pace with changing economic conditions, the magnitude of this increase may create problems for public agencies. Public sector salaries tend to be lower than those in the private sector, but pensions and other benefits tend to be more generous. It would seem that for public agencies, therefore, other benefits besides salary should be included in the computation when determining whether employees are exempt under this rule. There are also serious concerns about positions where the duty test and the salary level conflict, causing confusion about classifications. Further, basing the minimum salary basis for exempt employees on this percentile of national wages is inappropriate given the significant differences state by state with regard to other costs that impact an employee's wage. The selection of the 40th percentile seems arbitrary and the data for the indicator goes back only to 2013. On behalf of our membership, CSAC would suggest a more gradual upward adjustment, an implementation delay, or some concessions specifically for public entities.

Automatic Annual Adjustments of Overtime Pay Threshold

Instituting a mechanism to automatically update the salary level on an annual basis for the purposes of calculating the salary threshold for overtime exemption is problematic for counties as employers. The volatility of the changes would make planning and budgeting very challenging, and public sector salaries are generally not as flexible as private sector salaries and have many additional constraints, including bargaining agreements, restricted sources of revenue, and civil service rules. Additionally, employers in California are already facing significant cost increases including implementing a paid sick leave mandate for all employees, the highest state income and sales taxes and the most expensive workers'

compensation costs. We would urge the Department of Labor to avoid implementing any proposed automatic adjustment to exempt employees' salary through any mechanism.

Raising Salary Threshold for Highly Compensated Employees

Raising the threshold for highly compensated employees (HCE) is another area of concern for counties. As aforementioned, counties do not generally pay as much as private sector employers and thus many of the counties' highest paid employees would no longer qualify as an HCE. Should the Department of Labor decide to increase the HCE threshold to such an elevated amount, it should simply deem all HCEs exempt and eliminate the duties test, which is currently unclear and ripe for litigation.

Requesting Separate Comment Period for Changes to Duties Tests

While we believe the current Executive, Administrative, Professional (EAP) duties test should be retained as it is adequate and results in an accurate assessment of exempt status (and any changes would negatively affect our merit system structures), we would also urge the Department of Labor to consider extending the public comment period for at least an additional 90 days. This would ensure our members sufficient time to calculate the economic or administrative impact on their county.

While these are just a sample of the myriad issues regarding the FLSA proposed rule change, CSAC looks forward to working further with the Department of Labor and other stakeholders on future comments and suggestions as the process moves forward. Thank you for your consideration of these comments. Please contact Faith Conley (CSAC) at fconley@counties.org or (916) 650-8117 with any questions.

Sincerely,

Faith Conley
Legislative Representative