

EMPLOYMENT LAW UPDATE

Relationship-Driven Results

December 2019

LEGISLATIVE

Federal

Department of Labor's Final Rule Regarding White Collar Exemptions Goes into Effect

The U.S. Department of Labor's final rule amending the Fair Labor Standards Act ("FLSA") regulations for white collar overtime exemptions for employees goes into effect on January 1, 2020. The final rule increases the minimum salary level for exemption from \$455 per week to \$684, or \$35,568 per year. The final rule also increases from \$100,000 to \$107,432 the total annual compensation required for employees to qualify under the highly compensated employee test. California employers are subject to California's higher minimum salary threshold rather than the new FLSA rate. Because employers must comply with whichever law is more favorable to the employee, the FLSA changes will have little impact on California employers.

California's minimum salary test for exempt status is tied to the state minimum wage rate. To meet the minimum salary test, a California worker must earn two times the state minimum wage. In addition, the new FLSA rule has other provisions that do not apply in California. Unlike federal law, California does not maintain a highly compensated employee exemption. In addition, California does not permit bonuses, commissions, or incentives to be counted in order to meet the minimum salary test for exempt status.

JUDICIAL

California

California Supreme Court Agrees to Hear *Dynamex* Retroactivity Question

The Supreme Court of California recently decided it would review and decide whether its 2018 *Dynamex* ruling applies retroactively. In *Dynamex*, the California Supreme Court adopted the ABC test for determining whether a given worker is properly classified as an independent contractor or an employee under the state's wage orders. Under the ABC test, a worker is presumed to be an employee unless the hiring entity can prove: (A) the worker is not under its direction or control in the performance of the subject work; (B) the worker is not doing business in the hiring company's "normal course of business"; and (C) the worker is customarily engaged in an independent business.

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Restaurant & Hospitality

Retail

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Transportation

In 2019, the Ninth Circuit Court of Appeals held that the *Dynamex* decision had retroactive effect – meaning the ABC test would apply to classification status that existed before *Dynamex*. The Ninth Circuit subsequently withdrew its opinion in *Vazquez v. Jan-Pro Franchising Int’l, Inc.* and indicated that it would ask the California Supreme Court to address this issue.

Separately, AB 5 – a law that expands *Dynamex* – was signed into law by Governor Gavin Newsom and goes into effect on January 1, 2020.

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This is Pettit Kohn Ingrassia Lutz & Dolin PC’s monthly employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Jenna Leyton-Jones, Ryan Nell, Jennifer Suberlak, Shannon Finley, Blake Woodhall, Carol Shieh, Shelby Harris, Kristina Magcamit, or Brittney Slack at (858) 755-8500; or Grant Waterkotte, Tristan Mullis, Andrew Chung, Jennifer Weidinger, Rachel Albert, or Mihret Getabicha at (310) 649-5772.