Employment Law Bulletin

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California Employers Take Note: The US Department of Labor Increased the Minimum Salary for Exempt Employees and It Affects Your Exempt Employees!

On May 18, 2016, the US Department of Labor issued a Final Rule updating the Fair Labor Standards Act to raise the minimum annual salary requirement from $23,660 to $47,476 for employees classified as exempt under the executive, administrative and professional exemptions. The Final Rule takes effect December 1, 2016, and also provides for automatic salary threshold increases every three years, beginning January 1, 2020. The Final Rule did not make any changes to the "duties test" that determines whether salaried workers earning more than the salary threshold are ineligible for overtime pay.

Since 2004, the federal $23,660 minimum salary requirement has paled in comparison to California's minimum salary requirement for executive, administrative and professional exempt employees – currently $41,600/year. However, with the increase in the federal minimum salary to $47,476, federal law will be more favorable to employees than California law. As a result, effective December 1, 2016, California employers must either raise exempt employees' annual salaries to a minimum of $47,476, or reclassify them as nonexempt, entitling employees to overtime, meal and rest breaks.

Employers have until December 1, 2016 to prepare to comply with the new federal law. If your exempt employees are paid less than $47,476/year, contact an SMT employment attorney to discuss your options. If you aren't sure what an exemption is, but you pay employees a salary without eligibility for overtime, this new law applies to you. Contact us. We can help.

Lisa Ann Hilario

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The New Defend Trade Secrets Act

Does your business protect its trade secrets? Trade secrets are confidential information, including customer data, that has been (1) compiled or created by you; (2) has independent economic value; and (3) is not generally known to the public. Common examples of trade secrets are customer lists, pricing schedules, specially designed forms, manufacturing processes, inventions, software, recipes, and databases, to name a few. Trade secrets are secrets that would make money for your employee's next employer—and possibly undercut your company's competitive edge.

Additional protections for trade secret violations are now available across the U.S. under a federal law enacted in May known as the "Defend Trade Secrets Act". The Act allows companies to file civil lawsuits for trade secret theft under the Federal Economic Espionage Act. It is particularly pertinent in today's mobile workforce where employees, especially high level management or professional employees, seek competitive opportunities outside of California beyond local reach. The Act also serves to simplify strategies for employers who do business in multiple states. Previously, employers were limited to convincing the U.S. government to prosecute the ex-employee or competing business as a crime, or chance a lawsuit based on different—and unfamiliar—sister state civil law to protect trade secrets and seek restitution. Differences between states made enforcement unpredictable and difficult. The Defend Trade Secrets Act recognizes that geographic boundaries blur in the reality of current marketplace economies and creates a uniform application of law.

The "Defend Trade Secrets Act" co-exists with current California law, so local remedies remain in place. However, employers can extend their reach since federal courts can consider the company's state trade secret claims along with the federal claim. Federal courts also have more expeditious calendars with fewer delays for reliable scheduling. The Act permits an application for a court order to direct the federal law enforcement agency to seize any competitor's property "necessary to prevent the propagation or dissemination of the trade secret" without a hearing or responsive pleading on a showing of "extraordinary circumstances". A company has three years in which to file a lawsuit in federal court, although state claim statutes of limitation vary state to state. Unlike California trade secret law, the Defend Trade Secrets Act provides for reasonable attorney fees to a prevailing company **if** the trade secret was willfully and maliciously misappropriated. However, attorney fees may also be granted against companies who file lawsuits in bad faith against ex-employees or competitors.

Companies with unprotected trade secrets should consider tightening up their procedures, including having a stand alone agreement for those employees who are entrusted with confidential information. Companies who have policies in place may need to update them. To take advantage of potential attorney fees or punitive damages, employers must advise their employees, contractors, and consultants of an exemption from liability when trade secrets are disclosed in confidence to a federal, state, or local government official, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law. Employers must also notify employees that they may also disclose trade secrets under seal in a lawsuit, when filing a retaliation lawsuit to his or her attorney or under court order. An employer can notify employees by a written document cross-referencing an existing reporting policy for a suspected violation of law. For help in updating your policies, please contact us.

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