

Living in a White-Collar World

Presented by Adam Belzberg and Tim O'Connell Labor & Employment Practice Group October 15, 2020



Today's Presenters



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How much is enough? 2021 salary thresholds



How much is enough?

Federal

- Salary basis \$35,568
- Non-discretionary bonuses and incentive payments
- Highly compensated employee \$107,432

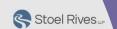


How much is enough?

POLL: Janae makes \$30,000 a year and was an exempt executive employee under the former salary threshold.

Under the 2019 DOL rule, is Janae entitled to a raise of her base salary?

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How much is enough?

Washington

1-50 employees: \$42,71251+ employees: \$49,831

Alaska, California

• 2x the state minimum wage

Oregon

 State minimum wage times 2,080 hours divided by 12



How much is enough?

POLL: Beginning January 1, 2021, the Washington threshold is higher than the federal threshold.

- 1. Can an Employer pay its exempt Washington employees according to the federal salary guideline?
- 2. What if the exempt employee resides or sleeps at the place of employment?

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It must be a "salary" or "fee"



Salary or fee

- A predetermined amount
 - Without regard for quantity or quality of work
 - Thresholds not pro-rated for less than full time
 - Be careful of:
 - Deductions for time away from work
 - Disciplinary suspensions
- Can be a fee-based payment (administrative, professional and outside sales)
 - Typically, a payment for a unique job
 - Not "piece work"





Job duties

"White-collar" exemptions

- Executive
- Administrative
- Professional
- Computer
- Outside sales

2019 DOL rule: no change to duties tests

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Job duties

- · Washington:
 - Few substantive changes, but
 - Now expressly follow interpretations of 2019 DOL rules
- California:
 - "Primary" means more than half the time



Job duties

Washington: Outside salesperson

- Primary duty: making sales or obtaining orders or contracts
- Customarily and regularly engaged away from place of business (broadly defined?)
- Compensated on guaranteed salary, commission or fee basis and advised of employment status

WAC 296-128-540

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Job duties

POLL: Marshall's primary job duty is making sales and he is paid on a commission basis. Marshall has been working from home, away from his employer's place of business, since March of this year.

Can Marshall be classified as exempt?



Recent cases

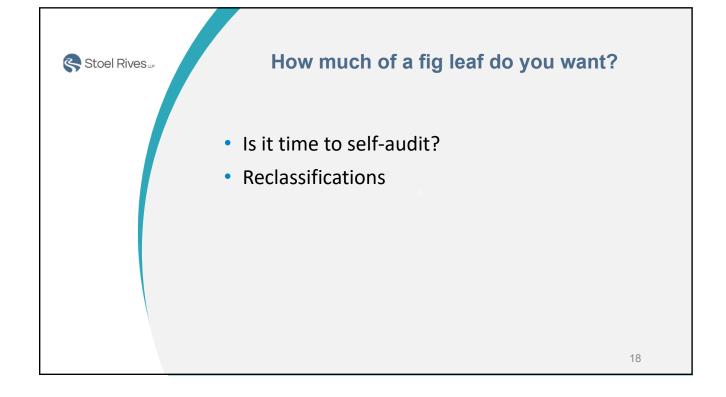


Recent cases

- Encino Motorcars, LLC v. Navarro, U.S. Sup. Ct.
- Isett v. Aetna Life Insurance Co., 2nd Circuit
- Kimbrough v. Amarillo Urgent Care, N.D. Tex.
- Portillo v. Kohl's Corp., C.D. Cal.
- Ratcliffe v. Food Lion, LLC, M.D. Tenn.
- Hurt v. Commerce Energy, Inc., 6th Circuit
- Bigger v. Facebook, Inc., 7th Circuit



How much of a fig leaf do you want?





Questions?



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