



Living in a White-Collar World

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



Today's Presenters



Adam Belzberg
Partner
206.386.7516
adam.belzberg@stoel.com



Tim O'Connell
Partner
206.386.7562
tim.oconnell@stoel.com



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?

5

How much is enough?

Washington

- 1-50 employees: \$42,712
- 51+ employees: \$49,831

Alaska, California

- 2x the state minimum wage

Oregon

- State minimum wage times 2,080 hours divided by 12

6

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?

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”

9

Job duties

Job duties

“White-collar” exemptions

- Executive
- Administrative
- Professional
- Computer
- Outside sales

2019 DOL rule: no change to duties tests

11

Job duties

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

12

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

13

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?

14



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?



How much of a fig leaf do you want?

- Is it time to self-audit?
- Reclassifications

Questions?



Adam Belzberg
Partner
206.386.7516
adam.belzberg@stoel.com



Tim O'Connell
Partner
206.386.7562
tim.oconnell@stoel.com

Disclaimer

The content presented in these webinar materials is not privileged and does not create an attorney-client relationship. Please contact us directly if you need specific legal advice.