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Time to Audit Your Wage & Hour Policies!
Compliance with New Exempt Employee Salary Requirement

Like all other California employers, charter schools are required to abide by both State and Federal wage and hour laws. When determining if an employee qualifies as an “exempt” employee, both State and Federal law specify that a “salary test” must be satisfied by having the employee receive a fixed base salary which meets or exceeds the amount set by law. Under California law, the salary test is satisfied if the employee earns a monthly salary equivalent to at least twice the State’s minimum wage for full-time employment (defined as forty (40) hours per week). In contrast, the minimum base salary an employee must earn to satisfy the Federal salary test is set by regulations promulgated by the Federal Department of Labor (“DOL”). California employers are required to follow whichever body of law (either Federal or State) is most protective of and beneficial to employees.

Adding to the confusion is a new law - Senate Bill 3 (“SB 3”) - which calls for California’s minimum wage to increase over the next six (6) years. Furthermore, the DOL recently published revised regulations that will increase the minimum salary which satisfies the salary test under Federal law.

SB 3

Currently, California’s salary test would be satisfied by an employee making \$3,466.67 per month (the equivalent of \$41,600 per year). However, the minimum wage for employers with twenty-six (26) or more employees will increase to \$10.50 per hour on January 1, 2017, and is scheduled to increase each year thereafter. Below is a chart summarizing how the increase in minimum wage will impact the California salary test for employers with twenty-six (26) or more employees:

Date Range	Hourly Minimum Wage	Minimum Monthly Salary For Exempt Employees	Minimum Annual Salary For Exempt Employees
1/1/17 – 12/31/17	\$10.50	\$3,640.00	\$43,680.00
1/1/18 – 12/31/18	\$11.00	\$3,813.33	\$45,760.00
1/1/19 – 12/31/19	\$12.00	\$4,160.00	\$49,920.00
1/1/20 – 12/31/20	\$13.00	\$4,506.67	\$54,080.00
1/1/21 – 12/31/21	\$14.00	\$4,853.33	\$58,240.00
1/1/22 – [Until adjusted]	\$15.00	\$5,200.00	\$62,400.00

Please note the minimum wage implementation schedule is subject to three (3) caveats. First, SB 3 states that employers with twenty-five (25) or fewer employees have an extra year until they are required to implement the scheduled increases. For example, an employer with twenty-five (25) or fewer employees would not be legally required to provide a

minimum wage of \$10.50 per hour until January 1, 2018. Second, the Governor may postpone a scheduled increase for a year if the Governor finds, based on specific information to be provided by the Department of Finance, that the State economy or the State's General Fund will not support a minimum wage increase. Third, after January 1, 2022, the Department of Finance may adjust the minimum wage each following year based on the Consumer Price Index.

DOL Regulations

Currently, the DOL regulations provide that an employee who makes a fixed salary of at least \$455 per week satisfies the Federal salary test. However, the DOL recently finalized amendments to the regulations which provide that employees must earn at least \$913 per week (\$47,476 annually for a full-year worker) in order to satisfy the salary test, which is a significant increase from the prior standard. Further, the amount that employees must earn to satisfy the Federal salary test will be updated beginning on January 1, 2020 and every three (3) years thereafter. The amended DOL regulations are scheduled to take effect on December 1, 2016.

Please note that the amended DOL regulations contain certain exceptions to the salary test for professional and administrative employees working for an "educational establishment." Specifically, the Federal salary level and salary basis requirements do not apply to bona fide teachers (although teachers must still satisfy California's salary test in order to be exempt under California law). Further, administrative employees may satisfy the Federal salary test by being compensated on a salary basis which is at least equal to the entrance salary for teachers in the same educational establishment.

Next Steps

Given the increased complexity of wage and hour compliance with these recent changes in the law, charter schools should fully audit their compensation policies and salary schedules (e.g., carefully setting the starting teacher salary) to ensure teacher salaries will pass the California salary test. In addition, administrative employees' salaries should be in line with the salaries paid to full-time teachers pursuant to the revised DOL regulations. Further, please be aware that even if an employee satisfies the "salary" test, the employee cannot be lawfully classified as exempt unless the employee also satisfies a "duties" test where the employee's primary job duty is to use his/her independent discretion and judgment to complete tasks recognized as being "exempt" work.

If you would like assistance with auditing your policies/practices as they relate to exempt employee status, or if you have any questions regarding this update, please contact Jim Young, Chastin Pierman, or Marvin Stroud at the Law Offices of Young, Minney & Corr, LLP at (916) 646-1400. Or find us on the web at: www.mycharterlaw.com.

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