

***NEW CHANGES TO THE
FAIR LABOR STANDARDS ACT***

by

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NEW FLSA REGULATIONS **MORE EMPLOYEES ELIGIBLE FOR OT**

The Fair Labor Standards Act (“FLSA”) is the federal law regulating issues such as overtime, minimum wage, child labor laws and age discrimination. One issue addressed in the FLSA is which employees are “exempt” from receiving overtime pay and which employees are covered by the overtime regulations (called “non-exempt”). The original regulations governing the job duties necessary for an employee to receive exempt status were not updated from 1949 to 2004.

Additionally, the minimum weekly salary for achieving exempt status consideration was last adjusted in 2004 requiring that employers pay at least \$455.00 per week (\$23,660.00 annually) to meet the “salary test.” That works out to \$11.375 per hour. This is not too much more than the current minimum wage rate of \$7.25 per hour.

Recently, the Department of Labor issued the long-anticipated final overtime rule which included an increased exempt employee threshold of \$47,476 (\$913.00 per week) -- slightly more than double the old threshold of \$23,660. The impact of the increase will escalate in coming years; the rule included a hike every three years in the minimum salary for exempt employees. The automatic increase will be based on the 40th percentile of the weekly earnings of full-time salaried workers in the lowest-wage Census region (the South). Employers must comply

with the new rule by December 1, 2016.

Absent employer action, an estimated 4.2 million white collar workers will become newly entitled to overtime protection because of the increase in the salary level. As a result, many of these workers will be able to work fewer hours, will receive additional compensation when they work overtime, or will receive a salary increase to remain exempt. These new rules will clarify the overtime requirements for 8.9 million currently overtime-eligible salaried employees – 5.7 million salaried white collar employees and 3.2 million salaried blue collar employees – because their pay will fall below the new threshold.

As an employer, you need to know the regulations and tests for determining exempt status for your employees. An employee who does not satisfy all of the elements of the exempt status test are considered non-exempt and are eligible for overtime.

The tests to determine exempt status under the FLSA now include:

EXECUTIVE EXEMPTION

- The employee must be compensated on a salary basis at a rate not less than \$913.00 per week.
- The employee's primary duty must be managing the enterprise or managing a customarily recognized department or subdivision.

- The employee must customarily and regularly direct the work of at least two or more full-time employees or their equivalent.
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

ADMINISTRATIVE EXEMPTION

- The employee must be compensated on a salary or fee basis at a rate not less than \$913.00 per week.
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or employer's customers.
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

PROFESSIONAL EXEMPTION

- The employee must be compensated on a salary or fee basis at a rate not less than \$913.00 per week.
- The employee's duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring consistent exercise of discretion and judgment.
- The advanced knowledge must be in a field of science or learning.
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

There are also tests for Computer Employees and Outside Sales. Because of

the change in the threshold of the salary test, it is time to reevaluate the job duties of the employees who you now consider to be exempt from overtime pay. (*U.S. DOL, Wage and Hour Division, Fact Sheet #17A.*)

Schools and institutions of higher education are generally covered by the FLSA's minimum wage and overtime provisions. Several provisions apply, however, to many employees at these institutions that exempt them from the Final Rule. Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing. "Teachers" include, for example, regular academic teachers, kindergarten or nursery school teachers, teachers of gifted or disabled children, professors, adjunct instructors, teachers of skilled and semi-skilled trades and occupations, home economics teachers, vocal or instrument music teachers, and under certain circumstances, athletic coaches and assistant coaches.

Although a preschool may engage in some educational activities, preschool employees whose primary duty is to care for the physical needs of the facility's children would not meet the requirements for the exemption as a bona fide teacher.

However, "teachers" are not required to meet the "salary test" to meet the FLSA exemption. (29 C.F.R. §541.303 and §541.600.) Therefore, qualified teachers can be exempt from the overtime provisions of the FLSA even if they are paid less than \$47,476.00 per year.

PLAN OF ACTION

- ★ REVIEW SALARIES OF EXEMPT EMPLOYEES TO DETERMINE IF THEY ARE PAID LESS THAN \$47,476.00 PER YEAR.
- ★ REVIEW CRITERIA FOR ESTABLISHING THE EXEMPT STATUS OF EMPLOYEES.
- ★ EITHER ADJUST COMPENSATION TO EXCEED THE SALARY TEST OR PAY THESE EMPLOYEES ON AN HOURLY BASIS SUBJECT TO OVERTIME RULES.