



New Overtime Rule to Take Effect

by Kathryn M. Vanden Berk

After more than a year of contentious debate, the U.S. Department of Labor has released final regulations to revise rules that interpret overtime requirements of the Fair Labor Standards Act (FLSA). What started as a major revision of the regulations has been reduced to something much less. However, the new regulations take effect on August 23, 2004, so there is no time to lose in preparing to comply.

When the FLSA was passed in 1938, its overtime pay and minimum wage requirements were intended to prevent hardship among those who were on the low end of the wage scale. Regulations enacted over the years focused on how much the employee is paid, whether wage payments are dependent upon hours worked or not, and the nature of duties performed. There were two salary levels applied, thus giving rise to a “short test” and a “long test” to determine job classification.¹ The salary level tests have not changed since 1975, and the exempt duties test was last changed in 1949. As a result, today the long test minimum salary is actually below minimum wage!

Changes in Brief

These are the changes Alliance members need to be aware of:

- The minimum salary level for the major exemptions (executive, administrative, professional, and computer-related) will increase to \$455 per week.
- The “long” and “short” tests have been eliminated.

- There is a new exemption for certain highly-compensated employees making more than \$100,000 that don't fit into the existing exempt categories, so long as they have a base pay of \$455 per week.
- Job duties for each major exemption have been slightly modified.
- Employers may deduct for certain full-day disciplinary suspensions without jeopardizing the job's exempt classification.
- Improper deductions from an exempt employee's pay may result in loss of the exemption for that employee and all similarly situated employees working under the manager responsible for the improper deduction. Employer's can create a “safe harbor” that will protect against this so long as the improper deductions are inadvertent.

What You Must Do Now

You should do at least these things:

- Flag all employees making less than \$455 per week and reclassify them as nonexempt no later than August 23, 2004.

- Review all exempt positions for general compliance, especially if you have been thinking that some earlier classification decisions are iffy. You may still be liable for past violations, but this will prevent future liability. Pay particular attention to non-supervisory administrative and professional exempt employees. Exempt administrative employees must exercise discretion and independent judgment with respect to matters of importance. There is now a “creative professional” as well as a “learned professional.”
- Check for state laws that are more restrictive. Where federal and state laws differ, the most restrictive one applies. For example, in Illinois the determination as to who qualifies as exempt executives, administrators, or professionals will be made under the rules as they existed on March 30, 2003, except that Illinois will recognize the new salary thresholds. Thus, Illinois is rejecting the new “duties test” while accepting the new “salary test.”

Obtaining Additional Information

The U.S. Department of Labor provides a “FairPay Fact Sheet by Exemption” that is available at www.dol.gov/fairpay.

For more information regarding the FLSA, visit the Wage and Hour Division's Web site at www.wagehour.dol.gov or call a toll-free help line, available from 8 a.m. to 5 p.m. in your time zone, at 1-866-4US-WAGE (1-866-487-9243). Copies of Wage and Hour publications may be obtained from any office of the Wage and Hour Division.

Remember, when the state laws differ from the federal FLSA, you must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/esa/contacts/state_of.htm. ▲

¹ See “Exempt and Nonexempt Employee Classifications Under the Fair Labor Standards Act” by this author in the Summer 2001 Alliance for Children & Families Magazine.

Human Resources

Need expert human resources counsel on how this overtime rule applies to nonprofit human services? The Alliance Value-Added Partner MRA can assist you with all your questions. To learn more about a membership in MRA, contact Mary Riordan at 800-221-3726, ext. 3678 or mriordan@alliance1.org.

