

## NEW OVERTIME REGULATIONS

Effective August 23, 2004, the Wage and Hour Division of the U.S. Department of Labor has issued revised regulations that update the exemptions for salaried executive, administrative, professional and other “white collar” employees who are not entitled to overtime pay for working more than forty (40) hours in a week.

The highlights of the new regulations include:

1. The salary level for employees who are automatically entitled to overtime pay has been increased from \$155 per week to \$455 per week, which is an annual salary of \$23,660. This means that any salaried employee who makes less than \$455 per week will be entitled to overtime pay for work in excess of 40 hours per week regardless of the employee’s duties and responsibilities. The new regulations do not apply to manual laborers and “blue collar” workers who continue to be eligible for overtime pay, such as non-management production line employees and non-management employees in maintenance, construction and any of the trades (carpenters, plumbers, electricians, etc.).
2. For salaried employees who make at least \$455 per week, the statutory exemption from overtime pay requirements may apply, depending on the employee’s specific duties and responsibilities. “Salary” for this purpose is a predetermined amount of compensation paid on each pay period. Such compensation, to qualify as salary, cannot be reduced because of variations in the quality and quantity of work and, with specific exceptions, must be payable in full for any week in which the employee performs any work. **Improper deductions from an employee’s compensation can cause the loss of the employee’s exempt status (see item 6 below).** Permitted deductions from salary payments include:
  - Proportionate payments for time actually worked during the first and last weeks of employment.
  - Absences from work for one or more full days for personal reasons other than sickness or disability.
  - Absences from work for one or more full days due to sickness or disability pursuant to the employer’s bona fide sick leave plan or policy providing “wage replacement” benefits.
  - Offsets for amounts received for jury fees, witness fees or military pay.
  - Penalties imposed in good faith for violating safety rules of “major significance.”
  - Disciplinary suspensions of one or more full days imposed in good faith for violation of work rules.

Also note that certain employees, such as outside sales persons and employees in certain computer-related occupations who meet minimum compensation requirements, can be exempt even if not paid on a salaried basis.

3. Salaried employees earning at least \$455 per week will qualify as exempt “executive” employees if they satisfy all of the following requirements:
  - The employee’s primary duty is management of an enterprise or a customarily recognized department or division thereof.
  - Management duties for executive employees include selecting and training employees, setting pay and work hours, maintaining production or sales records, evaluating employees’ performance, handling complaints and grievances, disciplining employees and planning and allocating work among employees.
  - The employee “customarily and regularly” directs the work of at least two other full-time employees.
  - The employee has the authority to hire or fire other employees or the employee can make recommendations as to hiring, firing and promotion of other employees that are given “particular weight.”

The executive exemption also applies to employees who have a bona fide ownership interest in at least twenty percent (20%) of the business and are actively engaged in its management.

4. Salaried employees earning at least \$455 per week will qualify as exempt “administrative” employees if they satisfy all of the following requirements:
  - The employee’s primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or its customers, including “staff” jobs in the areas of tax, finance, accounting, quality control, purchasing, advertising, marketing, research, human resources, employee benefits, labor relations, governmental relations and regulatory compliance.
  - The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance, such as formulating management policies and operating practices, operating a particular segment of the business that affects overall business operations to a substantial degree, carrying out major assignments relating to the operation of the business, exercising authority to commit the employer with respect to matters that have a significant financial impact, providing consultation or expert advice to management, planning long term or short term business objectives, and representing the employer in handling complaints, arbitrating disputes and resolving grievances.

Exempt administrative duties do not include working on a production line, selling a product in a retail or service establishment, recording or tabulating data, clerical work, or applying established procedures or standards described in manuals or other references (this includes inspectors performing routine inspections as well as examiners and graders who compare products to established standards).

5. Employees in the exempt professions generally include doctors, registered nurses (not practical nurses), lawyers, teachers, accountants, pharmacists, engineers, actuaries, executive chefs, athletic trainers and licensed funeral directors.
6. Although an employee's exempt status can be lost if amounts are improperly deducted from the employee's "compensation," such deductions will not cause the loss of exempt status if they are isolated or inadvertent and the employer reimburses the employee for the deduction. Improper deductions would include deductions for partial-day absences for personal reasons and deductions of a day's pay because the employer's business was closed for weather-related reasons. However, an actual practice of making improper salary deductions will result in the loss of the exemption unless the employer follows the "safe harbor" procedure by:
  - Clearly communicating a policy prohibiting improper deductions, including a complaint mechanism;
  - Reimbursing employees for any improper deductions; and
  - Making a good faith commitment to comply in the future.

A model safe harbor notice has been prepared by the Department of Labor and is available at [www.dol.gov/esa/regs/compliance/](http://www.dol.gov/esa/regs/compliance/).

**Recommendations:** Compliance basics are not changed by the new regulations. Employers must examine the job duties of employees who meet the \$455 per week salary threshold. There may be employees currently treated as exempt who should not be, and vice versa. Employers must also maintain and communicate a policy of requiring non-exempt employees to record all working time and all such time must be compensated. Finally, consider circulating a "safe harbor" notice (item 6 above) by including it in an employee handbook, publishing it on the employer's intranet or handing it out with employment applications.

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