

Legislative Update

Fair Labor Standards Act: New White Collar Exemption Rules Effective

On August 23, 2004, final regulations under the Fair Labor Standards Act (FLSA) became effective. These regulations implement the exemption from federal minimum wage and overtime pay for executive, administrative, professional, outside sales and computer employees. This exemption is often referred to as the "white collar" exemption.

The FLSA was first enacted in 1938. It requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and, in most cases, must be paid on a salary basis at not less than the minimum amounts specified in the regulations. The minimum salary level was last updated in 1975, almost 30 years ago, while the job duty requirements in the regulations have not been changed since 1949, almost 55 years ago. Revisions to both the salary tests and the duties tests were intended to strengthen the FLSA overtime protections and to reflect federal case law developments prior the revision.

Most notably, the final regulations:

- explicitly spell out that "blue collar" workers are not subject to the overtime exemption,
- clarify that "first responders" are entitled to overtime,
- create a standard duties test for determining whether an employee meets a white-collar exemption,
- raise the minimum salary requirement for exempt employees,
- guarantee overtime for employees who earn less than \$455 per week (\$23,660 annually) without any consideration of their job duties,
- allow employers to deny overtime to "highly-compensated" employees who make over \$100,000 a year and perform at least one exempt job function,
- allow limited deductions from pay, such as allowing employers to suspend employees for misconduct in one or more full-day increments,
- permit employers to more easily fix improper deductions from an exempt employee's pay, and
- explain the educational requirements for certain employees to be classified as exempt.

The full text of the final regulations as well as a host of additional Department of Labor (DOL) information and fact sheets concerning the new white collar exemption regulations can be viewed on the DOL's website at

<http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm>

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