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Final white-collar exemptions announced; Major changes and recommendations for employers

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On April 20, 2004, the United States Department of Labor announced the contents of the final rule for the regulations governing white-collar overtime exemptions. The draft proposals were announced on March 27, 2003, and over 80,000 comments were received. The revised final regulations, including the preamble, are almost 550 pages long. These regulations contain the most significant changes in overtime regulations in the last 50 years.

The major changes in these final regulations are:

A. Salary test and deductions from the guaranteed salary:

1. The new salary level test to qualify for an exemption from overtime is \$455 per week, or \$23,660 per year.
2. There is now a special exemption for highly paid employees whose total compensation is at least \$100,000 a year if:
 - a. The \$100,000 total compensation includes a guaranteed salary of at least \$455 per week. In addition to the salary requirement, the total compensation may include commissions, nondiscretionary bonuses or other nondiscretionary payments; and
 - b. The employee's primary duty includes performing office or non-manual work; and
 - c. The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

3. Employers may now make deductions for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of written workplace rules applicable to all employees.

4. The new regulations specifically state that blue collar jobs and jobs such as firefighters, law enforcement personnel, EMTs, paramedics, and investigators in the public sector are subject to overtime regardless of rank or pay level unless their primary duty is that of an exempt employee.

B. The executive exemption

In addition to the salary being raised from \$250 per week to \$455 per week, there is an additional requirement that the individual must be able to hire or fire other employees or make recommendations that are given particular weight about hiring, firing, advancement, promotion or any other change of status.

C. The administrative exemption

The salary test has been raised to \$455 per week and the requirement for the use of independent judgment and discretion has been retained but now must be exercised "with respect to matters of significance."

D. The professional exemption

The salary level is \$455 per week. The final regulations also contain more discussion about particular occupations. For example, the regulations now make clear that salaried RNs are exempt whereas LPNs are not. Dental hygienists and physician assistants who have successfully completed four-year courses in accredited institutions are exempt as well as chefs and sous chefs who have graduated from a four-year culinary institute. Funeral directors/embalmers and athletic trainers who have successfully completed four-year courses of study approved by their licensing authorities are exempt. The regulations specifically state that paralegals are not exempt.

E. The effective date is August 23, 2004.

What employers before August 23, 2004

1. Review and analyze all jobs above \$23,660 per year. Also, identify any employee who is now classified as exempt but is paid a salary of less than \$455 per week.

2. Review and analyze job descriptions of positions in gray areas. Revise any that may not reflect actual duties.
3. If employees who were previously classified as exempt are now determined to be non-exempt, you must decide to pay overtime by either:
 - a. Converting the salary to an hourly rate of pay and paying time and one-half that rate for actual work over 40 hours per workweek; or
 - b. Retaining the salary but paying additional half time based upon the fluctuating workweek plan.
4. Provide training to managers to make them aware of the new regulations.

If you should have any questions, you may call me at 542-8612.