

FLSA 2016:

Overview of the New Rules

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Presented by: Deb Marshall

WIPFLi
CPAs and Consultants

Today's Presenter



Deb Marshall

Senior Manager – Human Resources Consulting

715.858.6923

dmarshall@wipfli.com

Disclaimer: This presentation is an overview of recent developments in the Fair Labor Standards Act and is subject to interpretation and the specific circumstances in individual organizations. Although our consultants are quite familiar with employment-related laws and regulations, we are not a substitute for qualified legal counsel.



Agenda



- Basics
 - Effective Date is December 1, 2016
 - Exemption salary level is a minimum of \$913/week, annualized = \$47,476/year for “EAP” jobs only
 - “Duties” test did not change
 - Highly compensated = \$134,004/yr.
 - Indexed every 3 years to 40th percentile of all salaried workers in lowest paying region of US
- “EAP” duties defined – Executive, Administrative, Professional
- Seasonality issues and viability of “part-time exempt”



Administrative Exemption – “Duties Test” #1

"Primary duty" means the principal, main, major or most important duty that the employee performs. TWO important points:

- 1. Performance of office or non-manual work "directly related to the management or general business operations" of the employer or the employer's customers.**
 - Work is directly related to assisting or running the business, as opposed to production, sales, or service work.
 - Includes such areas as tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety, human resources, employee benefits, labor relations, public relations, government relations, computer and information technology administration, and legal and regulatory compliance



Administrative Exemption – “Duties Test” #2

2. “The exercise of discretion and independent judgement with respect to matters of significance” includes when an employee ***has the authority to:***

- Make independent choices, free from immediate direction or supervision
- Formulate, affect, interpret, or implement management policies or operating practices
- Waive or deviate from established policies and procedures without prior approval
- Commit the employer in matters that have financial impact such as pledging the employer's credit

The fact that an employee's decisions are (or may be) reversed or reviewed does not mean the employee is not exercising independent judgment.



Professional Exemption – “Duties Tests”

TWO types – “learned” and “creative”



“Learned” Professional exemption

“Primary duty” must be the performance or work requiring advanced knowledge - defined as work that is:

- Predominately intellectual in character and which includes work requiring the consistent exercise of discretion and judgment
- “Advanced Knowledge” must be in a field of science or learning which must be customarily acquired by a prolonged course of specialized intellectual instruction (can’t be acquired at a high school level, and is customarily evidenced by the appropriate academic degree).
- “Advanced Knowledge” also means work is predominately intellectual in character and which requires the consistent exercise of discretion and judgement.
- Fields of science or learning include law, theology, accounting, actuarial computation, engineering, architecture, teaching, various physical, chemical, and biological sciences, pharmacy and other occupations that have a recognized professional status.

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Does NOT INCLUDE!!

- Lawyers
- Doctors
- Teachers (including Head Start)
- Outside Sales Employees
- Auto Dealerships (sales, parts, mechanics, service advisers – under Motor Carrier Act)
- 20% or more Business Owners
- A few other minor categories



“Creative” Exemption – “Duties Test”

“Primary Duty” must be the work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

- The requirements are generally met by actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, and novelists.
- Journalists may be exempt if their work involves invention, imagination, originality or talent. Journalists are not exempt if they only collect, organize and record information that is routine, or already public, or if they do not contribute a unique interpretation or analysis to the news product.





Exemption Status for Seasonal and Part-timers

- There has **never** been the ability to “pro-rate” the salary test based on hours worked.
- Old level of \$455/wk salary was often okay for part-time exempt employees (i.e. paid \$500/wk for 20-25 hours a week of work – it’s more than \$455).
- The new \$913/wk level will likely make this practice prohibitive.
- If employee in exempt position works only some weeks, that is okay as long as they are paid on a salary basis at least \$913/wk.



Communication is Critical!

- A lot of media coverage – many employees now are “expecting” more money.
- Need to talk NOW with employees, let them know you are working on this.
- Determine who is close, and what your options are.



Converting to Non-Exempt

- Wage “compression” may be an issue
 - Employees being raised to new minimum may “compress” existing employees already at or somewhat above this level (\$47,476)
- Determine if there will (or won’t) be any big changes in overall compensation.
- Need to track hours worked now so you have a basis to determine expectations.
- Use Excel calculator to determine “regular rate” if converting to non-exempt. Does not have to be “salary divided by 2,080 hours.”



Seven Communications Tips

1. Recognize that the May 18 announcement was "then" and this is "now."
2. Don't delay formal communications any longer.
3. Give managers talking points as well as a briefing.
4. Include information for exempts who are not affected by the new rules.
5. Don't over-explain or over-emphasize eligibility for overtime pay if you don't plan to approve overtime.
6. Face the communication complications you'll create if you raise salaries to the cutoff.
7. Don't politicize your explanations.

<http://www.compensationcafe.com/2016/06/7-tips-for-talking-with-employees-about-the-new-overtime-regs.html>

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