

New Federal Overtime Regulations

By Bonnie Lanham



Editor's Note: JDEtiPS is publishing this article to help your HR and Payroll departments start to wade through the new overtime regulations enacted in August 2004 by the US Department of Labor. Bonnie Lanham's involvement with the HR community through her consulting engagements inspired her to do this research, and has agreed to share it with all of us. While not a technical article, it contains valuable information that no HR department can afford to disregard.

Introduction

This article is not a technical how-to, but is designed to give some insight into the Department of Labor's Fair Pay Overtime Initiative. This insight will include a short history of the Fair Labor Standards Act. I will present a side by side comparison test for executive, administrative, professional, computer, and outside sales employees before 08/23/2004 and effective 8/23/2004, provided by the Department of Labor. Also, mentioned is the effect of the new regulations on "blue collar" workers, first responders, unions, and Register Nurses.

The next part of this article covers what to do if federal regulations don't match your state regulations. There are some things that you may want to review if you are using PeopleSoft World® or EnterpriseOne®. At the end, I have included a list of Websites that may help you to get answers to any questions you have about the new federal regulations for overtime.

Fair Labor Standards Act

The new regulations are an update of the Fair Labor Standards Act, the regulations that established a 40 hour workweek. The regulations

have been in effect since 1938. They guarantee most workers the right to overtime pay for every hour worked beyond 40 hours per week.

Under the new changes, the salary level for which workers are guaranteed overtime pay would increase for the first time since 1975. Workers who earn \$455 per week, or approximately \$23,660 a year or less, will be eligible for overtime. The previous salary level for guaranteed overtime eligibility was \$155 per week, or approximately \$8,000 per year or less. The labor department says the changes will guarantee overtime compensation to 1.3 million low-wage workers who were previously ineligible. The administration predicts that 644,000 white-collar workers will no longer qualify for overtime benefits. But the Economic Policy Institute concluded that as many as 8 million workers who previously received overtime benefits will no longer qualify. Most agree an update is long overdue, but there is much disagreement on the effect of these new regulations.

Side-by-Side Comparison

Our Side-by-Side table is taken directly from www.dol.gov/esa/regs/compliance/whd/fairpay. It is printed here with permission from the Department of Labor. This is a comparison of the short test before 8/23/04 and the standard test effective 8/23/04. Tests are for Executive, Administrative, Professional, Computer, and Outside Sales Employees. Under the new federal rules, white-collar positions paying more than \$100,000 per year are exempt from overtime pay if the employee has performed at least one duty in an executive, administrative, or professional function job.

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SIDE-BY-SIDE Overtime Security for the 21st Century Workforce

Comparing the Tests for Executive Employees

	Short Test Before 08/23/2004	Standard Test Effective 08/23/2004
Salary Level	\$250 per week	\$455 per week
Duties	<p>Whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; and</p> <p>Includes the customary and regular direction of the work of two or more other employees therein.</p>	<p>Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;</p> <p>Who customarily and regularly directs the work of two or more other employees; and</p> <p>Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.</p>

Comparing the Tests for Administrative Employees

	Short Test Before 08/23/2004	Standard Test Effective 08/23/2004
Salary Level	\$250 per week	\$455 per week
Duties	<p>Whose primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers; and</p> <p>Which includes work requiring the exercise of discretion and independent judgment.</p>	<p>Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and</p> <p>Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.</p>

Comparing the Tests for Professional Employees

	Short Test Before 08/23/2004	Standard Test Effective 08/23/2004
Salary Level	\$250 per week	\$455 per week
Duties	<p>Whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study; and</p> <p>Which includes work requiring the consistent exercise of discretion and judgment; or</p> <p>Whose primary duty consists of the performance of work requiring invention, imagination, or talent in a recognized field of artistic endeavor.</p>	<p>Whose primary duty is the performance of work requiring knowledge of an advanced type (defined as work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment) in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or</p> <p>Whose primary duty is the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.</p>

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