

October 14, 2016

Dear Client:

Effective December 1, 2016 the Department of Labor's new overtime rules take effect. We want you to have an understanding of the basic issues surrounding these changes so you know what questions to ask and the ability to identify possible issues.

The first step for a business to take is to review the different exemptions in place under the FLSA (Fair Labor Standards Act). Attached is a listing of common exemptions. Note that the DOL has only changed the executive, administrative, professional and outside sales employee exception; all other exemptions remain unchanged.

There are four main requirements of FLSA: Minimum wage, time & half for overtime, certain record keeping and child labor restrictions. "Exempt" means not subject to one or more FLSA requirements. Everyone is "covered" unless an exemption clearly applies.

As mentioned before, the DOL only changed the exemption rules for the executive, administrative, professional and outside sales employee exemption also called the "white collar" exemption. Previously to qualify under this exemption the employee had to perform specific duties and be paid a salary of \$455 a week. As of December 1 the minimum salary level to qualify for this exemption increases to \$913 a week.

The DOL changes will not affect the following:

1. Any employees already paid hourly with overtime.
2. Any employees under a different exemption (see the attached page).
3. Any teachers, doctors, lawyers and certain computer professionals.
4. Any employees paid a salary exceeding \$913 a week.
5. Certain employees of not-for-profit organizations, if they meet certain exceptions for both enterprise coverage and individual coverage.

If the business is paying an employee a salary that doesn't meet one of the above exceptions it has the following options:

1. Raise salaries to \$913 a week to maintain exemption.
2. Reorganize workloads, adjust schedules or spread work hours to keep under 40 hours a week.
3. Pay current salaries, with overtime after 40 hours.
4. Re-calculate wages downward to factor in additional overtime pay.
 - a. DOL has stated employers can readjust salary levels down if the employer expects to pay overtime.

Now is a great opportunity to review current classification of employees and correct anyone who might be misclassified as exempt. If needed, consider implementing a time keeping system for employees who must be paid overtime. If you are not sure about exemptions and applicability, consider speaking with a qualified employment attorney and keep job descriptions accurate to make sure it reflects what employees are doing. Also run the numbers to see how the changes might affect your bottom line. If you visit the Department of Labor – Wage & Hour Division website you can get more detailed information.

Please contact us if you have further questions. We appreciate the opportunity to work with you.

Sincerely,

Bashore Reineck Stoller & Waterman Inc

Exemptions

Some employees are exempt from the overtime pay provisions, some from both the minimum wage and overtime pay provisions and some from the child labor provisions of the Fair Labor Standards Act (FLSA). Exemptions are narrowly construed against the employer asserting them. Consequently, employers and employees should always closely check the exact terms and conditions of an exemption in light of the employee's actual duties before assuming that the exemption might apply to the employee. The ultimate burden of supporting the actual application of an exemption rests on the employer.

Exemptions are typically applied on an individual workweek basis. Employees performing exempt and non-exempt duties in the same workweek are normally not exempt in that workweek. Following is a list of some of the more commonly used exemptions. This list is not intended to be all-inclusive. By clicking on the underlined text below, you will be linked to information on the exemption. Other, less commonly used FLSA exemptions, are listed after this section.

Commonly Used Exemptions

[Commissioned sales employees](#) of retail or service establishments are exempt from overtime if more than half of the employee's earnings come from commissions *and* the employee averages at least one and one-half times the minimum wage for each hour worked. You may also wish to [review the applicable regulation](#).

[Computer professionals](#): Section 13(a)(17) of the FLSA provides that certain computer professionals paid at least \$27.63 per hour are exempt from the overtime provisions of the FLSA.

[Drivers, driver's helpers, loaders and mechanics](#) are exempt from the overtime pay provisions of the FLSA if employed by a motor carrier, and if the employee's duties affect the safety of operation of the vehicles in transportation of passengers or property in interstate or foreign commerce. You may also wish to [review the applicable regulation](#).

[Farmworkers](#) employed on small farms are exempt from both the minimum wage and overtime pay provisions of the FLSA. You may also wish to [review the specific regulation](#). Young workers employed on small farms, with parental consent, are also exempt from the child labor provisions of the FLSA. For more information on exemptions from the [child labor provisions](#) of the FLSA in agriculture, click the underlined text. Other farmworkers are exempt from the FLSA's overtime provisions. You may also wish to [review the specific regulation](#).

Salesmen, partsmen and mechanics employed by automobile dealerships are exempt from the overtime pay provisions of the FLSA. You may also wish to [review the applicable regulation](#).

[Seasonal and recreational establishments](#): Employees employed by certain seasonal and recreational establishments are exempt from both the minimum wage and overtime pay provisions of the FLSA. You may also wish to [review the applicable regulation](#).

[Executive, administrative, professional and outside sales employees](#): (as defined in Department of Labor regulations) and who are paid on a salary basis are exempt from both the minimum wage and overtime provisions of the FLSA.

Other FLSA Exemptions

(MW = minimum wage OT = overtime CL = child labor)

Aircraft salespeople - OT
Airline employees - OT
Amusement/recreational employees in national parks/forests/Wildlife Refuge System - OT
Babysitters on a casual basis - MW & OT
Boat salespeople - OT
Buyers of agricultural products - OT
Companions for the elderly - MW & OT
Country elevator workers (rural) - OT
Workers with disabilities - MW
Domestic employees who live-in - OT
Farm implement salespeople - OT
Federal criminal investigators - MW & OT
Firefighters working in small (less than 5 firefighters) public fire departments - OT
Fishing - MW & OT
Forestry employees of small (less than 9 employees) firms - OT
Fruit & vegetable transportation employees - OT
Homeworkers making wreaths - MW, OT & CL
Houseparents in non-profit educational institutions- OT
Livestock auction workers - OT
Local delivery drivers and driver's helpers - OT
Lumber operations employees of small (less than 9 employees) firms - OT
Motion picture theater employees - OT
Newspaper delivery - MW, OT & CL
Newspaper employees of limited circulation newspapers - MW & OT
Police officers working in small (less than 5 officers) public police departments - OT
Radio station employees in small markets - OT
Railroad employees - OT
Seamen on American vessels - OT
Seamen on other than American vessels - MW & OT
Sugar processing employees - OT
Switchboard operators - MW & OT
Taxicab drivers - OT
Television station employees in small markets - OT
Truck and trailer salespeople - OT
Youth employed as actors or performers - CL
Youth employed by their parents - CL