

U.S. DEPARTMENT OF LABOR
ANNOUNCES NEW OVERTIME REGULATIONS

On April 20, 2004, the U.S. Department of Labor (“DOL”) issued its new regulations which significantly change the criteria for determining salaried “white collar” overtime exemptions under the Fair Labor Standards Act (“FLSA”). According to the DOL, the sixty-one pages of new regulations will expand overtime eligibility for 6.7 million workers, including 5.4 million workers who will be guaranteed overtime for the first time because their salaries are below the increased minimum salary level. The regulations are scheduled to take effect August 21, 2004.

Background

Generally, the FLSA requires employers to pay overtime wages for those hours worked in excess of forty (40) in a work week. Certain employees are deemed exempt from overtime, including those employees performing executive, administrative, or professional work; outside salespersons; and certain computer employees. To be considered exempt, those categories of employees must be compensated above the defined “minimum salary level” and be paid on a “salary basis.” With the exception of computer employees (which the statute itself defines), exemptions are defined in the DOL regulations. Those definitions have not been significantly revised since 1954.

Summary of Major Changes

The new regulations contain many substantive changes, including the following:

1. Clarifying the executive, administrative, professional, and outside salesperson exemptions with more precise language, definitions, and examples:
 - A. An exempt executive employee must (1) be paid a salary of \$455 per week, (2) have the primary duty of the management of the enterprise or a recognized department or subdivision, (3) customarily and regularly direct the work of two or more employees, and (4) have the authority to hire, fire, promote, etc., or where such recommendations concerning hiring, firing, promoting, etc. are given particular weight.
 - B. An exempt administrative employee must (1) be paid a salary of \$455 per week, (2) have the primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers, and (3) customarily and regularly exercise discretion and independent judgment.
 - C. An exempt learned professional employee must (1) be paid a salary of \$455 per week and (2) have the primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, or a combination of intellectual instruction and work experience. An exempt creative professional must

- (1) be paid a salary of \$455 per week and (2) perform the primary duty of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.
- D. An exempt outside salesperson must (1) perform the primary duty of making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer, and (2) be customarily and regularly engaged away from the employer's place of business.
2. Increasing the minimum salary required for an executive, administrative, or professional exemption from \$155 per week (or \$8,060 per year) to \$455 per week (or \$23,660 per year). An employee paid less than the new minimum salary will automatically be eligible for overtime pay. This has the effect of expanding overtime eligibility for low-level supervisors, such as retail store and restaurant assistant managers.
 3. Allowing pay deductions from salaried employees for a full-day disciplinary absence, *i.e.*, one-day unpaid suspension (in addition to the other salary deductions already authorized in the regulations) without adversely affecting exempt status. In addition, the new regulations expand the safe harbor that prevents the loss of the overtime exemption for either isolated or inadvertent deductions in pay. The exemption is lost only if a pattern or practice of improper deductions exists.
 4. Making it easier to classify as exempt highly-compensated employees earning over \$100,000 annually (including base salary, commissions, and non-discretionary bonuses). To qualify as exempt, these employees must (1) be paid at least \$455 per week in base salary, (2) perform office or non-manual work, and (3) customarily and regularly perform one or more of the job duties required for executive, administrative, professional employees, outside salespersons, or computer employees.

These new regulations do not address the Family Time and Workplace Flexibility Act, which remains pending in Congress.

Further Information

It is likely that the new regulations will be subject to legal challenge, and we will keep you posted on the latest developments. Nevertheless, the new regulations may require revising current job descriptions and/or reclassifying some employees' overtime status. We are available to assist you in complying with these major changes. Please direct any questions to Sean Crotty at (313) 465-7336 or scrotty@honigman.com.