

**LAW TALK**



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Employers covered by the Fair Labor Standards Act may be facing some big changes. FLSA is the law that requires overtime pay. For years, employers have criticized the law for being out of touch with the modern workplace, as well as being a burden to administer.

Now, the Bush administration is proposing regulation changes to answer that criticism. The new regulations are likely to be implemented late this year. The Department of Labor has estimated 3 million employees who are currently exempt would become nonexempt

## Landmark Changes in Overtime Laws

and 640,000 employees who are currently nonexempt would become exempt. If the proposed regulations are implemented, covered employers will want to conduct an audit of their work force and review their payroll practices.

With the new regulations, there are some important changes in the White-Collar Exemptions. For example, exempt executive employees would be those with primary duty for managing the enterprise or a recognized department or subsidiary; who customarily and regularly direct the work of two or more other employees; have authority or input into hiring or firing other employees; or who are paid on a salary basis of at least \$425 per week (\$22,100 per year).

Under the proposed rule, employees compensated at an annual rate of less than \$22,100 would be paid for overtime. On the other hand, under a new special rule, employees earning at least \$65,000 annually won't be paid overtime if they meet any of the above criteria, and someone who owns at least 20 percent equity in a business in which they're employed would also be exempt.

Exempt administrative employees would be those who have the primary duty of performing office work directly related to management or customer service; or who hold a position of responsibility defined as either of substantial importance, highly skilled or paid on a salary basis of at least \$425 per week.

The new regulations could expand the availability of the administrative exemption. Many employees who provide services that may arguably be considered an employer's product, such as tax, finance, accounting, auditing, insurance, quality control, purchasing/procurement, advertising, marketing, research, safety and health, human resources, employee benefits, labor relations, public relations, and government regulations, would no longer risk disqualification from the administrative exemption.

Exempt professional employees would be those with the primary duty of performing office or non-manual work requiring knowledge of an advanced-type science or an area associated with a prolonged course of specialized intellectual instruction but acquired through experience; or those paid on a salary basis of at least \$425 a week.

The proposed regulations could be significant for employees, such as accountants without CPA certification and highly skilled, highly paid technical workers without college degrees who are performing essentially the same jobs as employees with degrees.

The proposed regulations recognize creative professionals by referencing work “requiring invention, imagination, originality or talent.” Thus, creative professionals such as reporters, announcers, and commentators for newspapers, magazines, radio, television and the Internet could become exempt.

The Salary Basis Test is used under the current and proposed regulations to determine if an employee is exempt.

Under current regulations, pay deductions for absences caused by the employer aren't allowed. For private-sector employers, partial-day deductions from an exempt employee's salary for vacation or illness aren't allowed either. Full-day deductions are allowed only for major safety rule violations and for work suspensions of a week or more.

Under the proposed regulations, employers are allowed to make full-day deductions for disciplinary absences. Also, improper deductions by an employer will less likely jeopardize an entire class of employees.

The proposed regulations have not yet been enacted and may be changed before they are implemented. However, employers should be on the lookout.

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