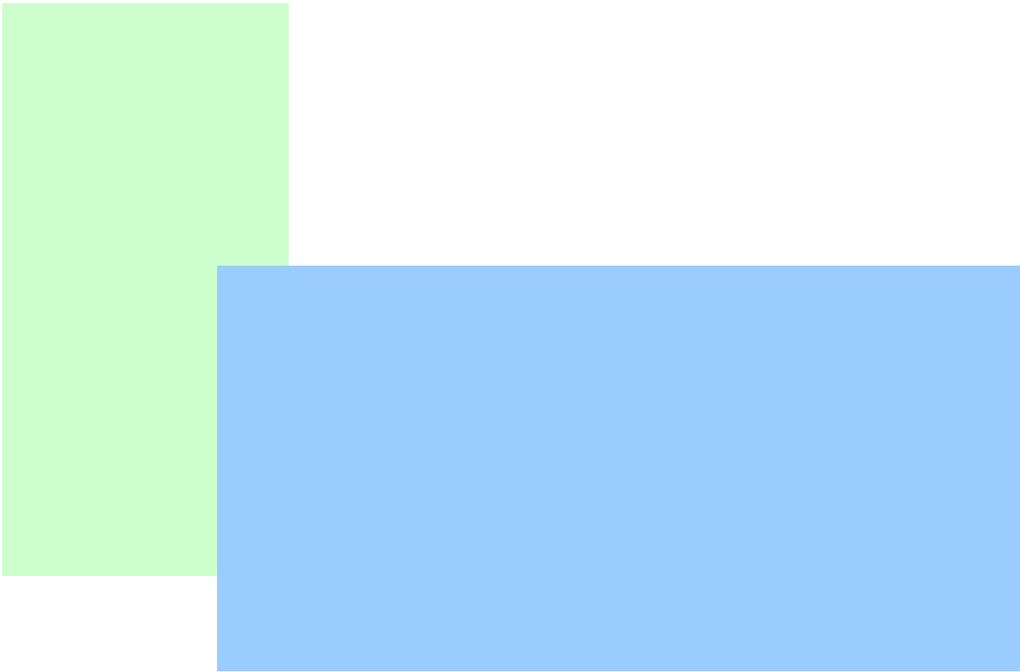

FairPay 2004:

Are You in Compliance?



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FairPay 2004: Are You In Compliance?

Overview

The Wage and Hours Division of the U.S. Department of Labor issued the FairPay Rules (Final Part 541) on April 20, 2004. These regulations became effective on August 23, 2004, specifying new overtime pay rules for employees.

The changes in legislation were prompted by outdated tests and salary levels that denied overtime to low wage workers. The last major revision to the qualifying tests had taken place in 1949, while the qualifying salary levels had last been updated in 1975.

The updated regulations include "White Collar" overtime exemptions for those employees who are classified as Executive, Administrative, Professional or Outside Sales. There are also specific exemptions for some computer employees.

The exemptions are based on various tests, which are determined by salary level, how employees are paid or "salary basis", and employee job responsibilities.

For instance, the new salary threshold is a minimum of \$455 per week, or annual earnings of \$23,660. Employers must pay overtime to all employees earning less than \$455 per week.

At the other end of the scale, there is an exemption for "Highly Compensated Employees" that applies to employees who work in an office or on non-manual tasks and receive a minimum of \$100,000 in total compensation annually.

Who Earns Overtime With The New Policy?

Earnings (yearly)

New Law

\$23,660 or less

Generally eligible for overtime based on earnings

\$23,660 to \$100,000

Duties Tests evaluation will determine eligibility for overtime

\$100,000 or more

Generally are not eligible for overtime

**Review the regulations at <http://www.dol.gov/esa/whd/flsa> for more info.*

Salary deductions ("docking")

In general, you cannot "dock" the pay of salaried exempt employees except under certain specific situations. The regulations outline seven exceptions to the "no docking" rule. For instance:

- The employer can dock for full day absences for personal reasons (not illness or disability).
- The employer can dock for sick days, when the policy is applied as part of a bona-fide sick pay plan, including short-term disability plans and state-sponsored disability or workers' compensation programs.
- The employer can impose penalties for infractions of safety rules "of major significance".
- The employer can impose disciplinary suspensions without pay for violations of workplace rules.
- The employer can offset jury pay, witness fees or military reserve pay that an employee receives.
- The employer is not required to pay a full week's salary during the first or last weeks of employment (unless, of course, the employee actually worked the entire week). The employer is permitted to pay the employee proportionately for the work he or she actually performs.
- The employer is not required to pay a full week's salary during weeks that the employee takes unpaid leave under the Family and Medical Leave Act. The employer is permitted to pay the employee proportionately for the work he or she actually performs.

Taking improper deductions from exempt employees' salaries can add up to big losses for businesses. Employers are strongly encouraged to effectively communicate the new policies with employees and to take action for those employees who need to be reimbursed for improper deductions. Penalties for taking improper deductions are based on several key areas:

- The number of improper deductions.
- The time frame in which improper deductions were made and the time period since the deduction occurred.
- The number of employees whose salary was affected by the improper deduction.
- The number of managers who were responsible for making the improper deduction.
- An evaluation of how effectively the employer communicated the policy to employees.

A "Safe Harbor" for employers is allowed if the employer:

- Has taken steps to communicate the policy to employees, which should include a method of tracking employee complaints.
- Reimburses the employee for improper deductions in a timely manner.

If you ignore the regulations and take improper deductions from employees' salaries, you can be putting your business at risk. If improper deductions are frequent, you can lose your exemption for that job classification, which in turn affects all employees with the same job classification company-wide.

Determining exempt status

Determining whether employees can be classified as exempt from receiving overtime pay is a multi-step process:

- First, the employee must earn more than the minimum threshold of \$455 per week.
- Second, in most cases the employee must be paid on a salaried (not hourly or piecework) basis.
- Finally, the employee must meet the duties test.

Job titles alone are not sufficient to determine whether an employee is exempt from overtime pay. In order to qualify for exemption, salaried employees earning over \$455 per week must meet certain tests.

There are five major classifications of salaried employees that can be considered exempt from overtime pay:

- Executive employees
- Administrative employees
- Professional employees
- Computer employees
- Outside Sales employees

Executive Employees are those whose primary duty is management of the enterprise. An executive employee directs the work of two or more other employees and has the authority to hire and fire, or make recommendations on hiring and firing that are given "particular weight."

Administrative Employees are those whose primary duty is the "performance of office or non-manual work directly related to the management or general business operations of the employer." In order to qualify for the exemption, this primary duty must involve the exercise of independent judgment or discretion on "matters of significance." Possible examples of administrative employees include team leaders, purchasing agents, and executive assistants.

Professional Employees are now divided into two classifications: Learned Professionals and Creative Professionals.

- Learned professionals are those whose work requires them to have "advanced knowledge," generally obtained through a "prolonged course of specialized intellectual instruction". People who have obtained their advanced knowledge through a combination of instruction and work experience may also qualify. Possible examples of learned professionals are lawyers, chemists and physicians. Beware: simply because a job description specifies a four-year college degree, or an employee holds an advanced degree, this does not necessarily mean the learned professional exemption applies!
- Creative professionals are those whose job requires the application of invention, originality, imagination or talent in a "recognized field of artistic or creative endeavor." Possible examples of creative professionals are writers, dancers, graphic designers and some painters.

