

**UNITED STATES DEPARTMENT OF LABOR ISSUES NEW  
“WHITE COLLAR EXEMPTION” REGULATIONS**

On April 23, 2004, the U.S. Department of Labor (the “DOL”) issued new regulations outlining the scope of the so-called “White Collar” exemptions from the Fair Labor Standards Act’s minimum wage and overtime requirements. These new regulations were published in the Federal Register on April 23, 2004. The regulations become effective 120 days after publication in the Federal Register.

**New Regulations Increase Minimum Salary Requirements and Alter Job Duties Tests for Exemptions**

Under the new regulations, the minimum salary required in order to classify an employee as exempt increases to \$455/week – the equivalent of \$23,660/year for a full-time employee. The new regulations also eliminate the “short test” and the “long test” and replace them with a “*standard duties test*.” The *standard duties test* includes elements from both the current short test and long test for exempt employees. Employers should review the status of all employees with respect to their eligibility for overtime compensation because the new *standard duties test* may require employers to change the classification of certain employees. A chart comparing the current short tests with the new *standard duties tests* for executive, administrative and professional employees follows.<sup>1</sup> While it is difficult to predict the impact of the new regulations, it appears that the *standard duties test* will narrow the number of employees who will be eligible for the executive employee exemption.

**Side-by-Side Comparisons of the Current and New Regulations**

<b>Earnings</b>	<b>Current Regulation</b>	<b>New Regulation</b>
Less than \$155/week (long test for executive and administrative employees)	Guaranteed Overtime	Guaranteed Overtime
Less than \$170/week (long test for professional employees)	Guaranteed Overtime	Guaranteed Overtime
\$155 to \$249.99/week (long test for executive and administrative employees)	No overtime if meet long test	Guaranteed Overtime
\$170 to \$249.99/week (long test for professional employees)	No overtime if meet long test	Guaranteed Overtime
\$250 to \$454.99/week (short test)	No overtime if meet short test	Guaranteed Overtime
\$455/week to \$100,000/year	No overtime if meet short test	No overtime if meet <i>Standard Duties Test</i>
\$100,000/year or more	No overtime if meet short test	No overtime if meet <i>Highly Compensated Test</i>

<sup>1</sup> The long tests are infrequently used because in most cases salaried employees will meet the higher salary threshold of the easier to apply short tests.

## **New Regulations Require Certain Highly Paid Employees to be Eligible for Overtime Compensation**

The new regulations expressly exclude from coverage “blue collar” employees and “first responders.” Thus, employees in these categories are entitled to overtime compensation *regardless of how highly paid they might be*. Employees entitled to overtime pay under this exclusion may include carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, police officers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, correctional officers, state troopers, rescue workers and hazardous materials workers.

## **New Regulations Create New Exemption for Certain Highly Compensated Employees**

Under the new regulations, highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA overtime requirements if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the *standard duties tests* for exemption.

## **New Regulations Permit Certain Unpaid Disciplinary Suspensions of One Day or More for Exempt Employees**

The current regulations only permit employers to deduct pay in connection with the discipline of an exempt employee for penalties imposed for infractions of safety rules of major significance and for unpaid suspensions for one or more full work weeks. The new regulations allow employers to dock exempt employees’ pay in connection with disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. However, in order for the deduction from salary to be permissible, such unpaid suspensions must be imposed pursuant to a written policy applicable to all employees.

## **New Regulations Create “Safe Harbor” for Employers to Correct Certain Improper Deductions From Salary Without Losing the Exemption**

Under the current regulations, an employer can lose the exemption for an entire class of employees as a result of making improper pay deductions from one exempt employee. The current regulations do provide a “window of correction” where an employer who inadvertently makes impermissible deductions can, in some circumstances, retain the exemption by reimbursing employees for the impermissible deduction. The new regulations provide that an employer will lose the exemption if it has an “actual practice” of making improper deductions from salary, but also provide a “safe harbor” for employers who make improper deductions, but do not have an “actual practice of doing so.” The determination of whether an employer had an actual practice

of making improper deductions will be made on a case by case basis. In making this determination, the DOL will look at several factors, including the number of improper deductions, the time period over which the employer made the improper deductions and whether the employer has a clearly communicated policy permitting or prohibiting such deductions.

If you have any questions about the new regulations, please contact the attorney assigned to your account or Geoff Wermuth, Kathy Murphy or Michael Bertoncini.

## COMPARISON CHART ON DUTIES TESTS

### **EXECUTIVE EMPLOYEES DUTIES TEST**

CURRENT REGULATION (SHORT TEST)	NEW REGULATION
<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>Who customarily and regularly directs the work of two or more other employees.</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>

### **ADMINISTRATIVE EMPLOYEES DUTIES TEST**

CURRENT REGULATION (SHORT TEST)	NEW REGULATION
<p>Whose primary duty consists of the performance of office or non-manual work directly regulated 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 matter of significance.</p>

### **PROFESSIONAL EMPLOYEES DUTIES TEST**

CURRENT REGULATION (SHORT TEST)	NEW REGULATION
<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>