

THE NEW OVERTIME REGULATIONS

by Jill K. Blackmer, 2004

After much political debate, the new Fair Labor Standards Act ("FLSA") regulations concerning overtime went into effect on August 23, 2004. The new regulations better reflect the realities of doing business in the 21st century, and eliminate some of the confusion of the old regulations, many of which had not been changed since the 1940's and 1950's. More workers now will be eligible for overtime as the new FLSA regulations they increase the minimum salary level required for exemption from \$155 to \$455 per week. The regulations assist employers because they offer more clarification about which jobs are exempt. The new regulations provide a unique opportunity for employers to review and, where necessary, change their employee pay classifications, without the concern that the change acknowledges an existing violation.

There are now six job classifications that are exempt from the overtime requirement: Executive, Administrative, Professional (these three are typically referred to as the white-collar exemptions), Outside Salesperson, Computer Personnel and Highly Compensated (created by the new regulations). To be exempt, an employee must fit within one of the exemptions *and* must be paid at least \$455 per week, generally as a salary.

The Executive exemption requires that the employee manage the business or a department or division, customarily and regularly supervise at least two employees and have the authority to hire or fire. The new regulations state that police officers, state troopers, correctional officers, fire fighters, paramedics, EMT's, and hazardous materials workers do not qualify as exempt. Manual laborers are not exempt and a working foreperson in a factory probably would not be exempt even if he or she supervises others.

The test for meeting the Administrative exemption is that the worker's primary duty must be directly related to the management or general business operation of the employer and that the worker must exercise discretion and independent judgment concerning matters significant to the business. It's helpful to think of this exemption as applying to "overhead functions," rather than the production of either a product or a service. Employees who qualify for the administrative exemption include those who work in functional areas such as tax, finance, accounting, auditing, quality control, purchasing; sales and marketing, safety, human resources, public relations, government relations, computer network administration, and legal and regulatory compliance.

The Professional exemption applies to both Learned Professionals such as physicians, accountants, actuaries, engineers, architects, teachers, scientists, pharmacists, lawyers and theologians as well as to Creative Professionals such as musicians, writers, actors, graphic artists, composers, soloists, certain painters and writers. The Learned Professional test requires advanced study beyond high school, and learning "on the job" does not qualify. The new regulations generally allow the exemption for certified medical technologists, nurses, dental hygienists, physician assistants, chefs, and paralegals only if a four-year degree is required.

The Outside Sales Employees exemption is met if the salesperson's primary duty is making sales, including obtaining orders and contracts, and if the employee customarily works away from the employer's place(s) of business. Since door-to-door sales largely have been replaced by telemarketers and the internet, this exemption is used mostly by businesses selling to other businesses.

Computer personnel are exempt from the FLSA overtime requirement if they deal with systems analysis or design, or develop computer programs or systems. These employees must be highly skilled in computer systems, analysis, programming and software engineering. They must earn at least \$455 per week or not less than \$27.63 an hour.

The new regulations add a new exempt classification – Highly Compensated. An employee who earns at least \$100,000 per year, does no manual labor and performs just one of the duties required by the Executive, Administrative or Professional exemptions qualifies for this exemption.

So make the most of this opportunity and double-check that your business' pay classifications are correct.