

Fall 2004

## Recent Changes to the FLSA Overtime Exemptions

### DID YOU KNOW

■ On **August 23, 2004**, the US Department of Labor's (DOL) changes to the regulations governing the "white collar" overtime exemptions under the federal Fair Labor Standards Act (FLSA) went into effect.

■ Both California and federal law exempt executive, administrative, professional, computer, and outside sales employees from the minimum wage and overtime requirements, **provided** that the employees are compensated on a "salary" basis at not less than stated amounts and meet certain criteria regarding job duties and responsibilities.

■ Although California employers may not be directly impacted by the new federal changes because California provides greater employee protection than the FLSA, California employers still need to have a working knowledge of the new (and former) federal regulations because California law relies on the federal regulations.

### KEY FLSA CHANGES

■ **Salary threshold increased** to \$455 gross per week (\$23,660 annually).

■ **Revised "job duties" tests** for exempt categories.

■ **Highly-compensated employees** (as defined) are exempt (minimum of \$100,000/yr).

■ **New "safe harbor"** provision to minimize the impact of improper deductions from an exempt employee's salary.

■ **New permissible salary deduction** for full day absences.

### INTERNAL AUDIT OF YOUR WAGE & HOUR PRACTICES

The new FLSA changes provide an excellent opportunity for employers to have an internal audit conducted by an attorney (which is protected by the attorney/client privilege) or HR consultant because a job misclassification carries steep monetary penalties.

Although any determination will be fact-specific driven, a starting point is to:

■ Review job descriptions (which may need to be revised);

■ Compare actual job duties with job description;

■ Compare job duties with California and federal law; and

■ Take into consideration:

• Is the exemption based on the actual work performed or the job description;

• Are records maintained of actual (exempt) work performed;

- How does the employee spend his/her time (exempt vs non-exempt);
- Are the employees trained on the difference between exempt and nonexempt work;
- What are the realistic requirement(s) of the job;
- Are the employer's expectations realistic;
- Are the employee's practices different from the employer's realistic expectations;
- Is an employee avoiding a valid exemption by his/her own substandard performance; and
- Do job evaluations focus on exempt duties.

## Some Key Employment Websites

U.S. Dept. of Labor  
[www.dol.gov/esa](http://www.dol.gov/esa)

Division of Labor  
Standard Enforcement  
[www.dir.ca.gov/dlse/](http://www.dir.ca.gov/dlse/)

For more information, contact:

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