Presented by:

FAIR LABOR STANDARDS ACT (FLSA): IMPLICATIONS OF 2016 REGULATIONS

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Overview

- Enacted by Congress in 1938 in response to the Great Depression
- Sets requirements for minimum wages, overtime pay, equal pay, record-keeping and child labor standards for covered employees
- Distinguishes between Exempt and Non-Exempt employees
- Regulations have been modified rarely since 1938
  - Current regulations in effect: 2004 Amendments
  - New regulations: take effect December 1, 2016
Exempt vs. Non-Exempt Employees

Exempt employees
- Work on salary basis
- No necessity for hourly record keeping
- Not entitled to overtime pay

Non-Exempt employees
- Must be paid at least minimum wage ($7.25/hour)
- Entitled to overtime pay of “one and one-half” times an employee’s regular rate of pay for hours worked over 40 in a week

All employees should be treated as Non-Exempt unless they qualify for an exemption under the FLSA.
Qualification for Exemption

There is a three part test to determine whether an employee is Exempt:

1. **Salary Basis**
   - Predetermined, fixed and not subject to reduction because of variations in the quality or quantity of work performed.

2. **Salary Level Test**
   - The salary amount must meet a minimum specified amount

3. **Duties Tests**
   - Three primary tests: Executive, Administrative, Professional
   - Highly Compensated Employees (HCEs)
   - Computer Workers (CWs)
Important Note

Setting a flat salary, giving an employee a certain title, or offering a contract alone will not change the employee’s status under the FLSA.
3 PART TEST TO DETERMINE EXEMPTION
Part One: Salary Basis Test

Predetermined, fixed and not subject to reduction because of variations in the quality or quantity of work performed.

- Regular Paycheck
- Predetermined / Set amount
- Not Hourly
Part Two: Salary Level Test
(current vs. new)

**Current Regulations:**

- The employee must be paid at least $455.00/weekly, which amounts to $23,660 annually based on a 12-month work year, excluding lodging, board, and other benefits.

**New Regulations:**

- The employee must be paid at least $913.00/weekly, which amounts to $47,476 annually based on a 12-month work year, excluding lodging, board, or other benefits.

- This test is not applicable to teachers or academic administrators, both of which remain Exempt.
Part Three: Duties Test

- If employee does not meet the salary test, the employee is Non-Exempt.
- If the employee meets the salary test, move on to the Duties Test.
- There is no change to the Executive, Administrator or Professional Duties Tests in the new regulations.
Consider Employee’s Primary Duty

 “Principal, main, major or most important duty that the employee performs.”

 Each of the Executive, Administrator and Professional Tests uses a different analysis to determine the “primary duty.”
Duties Test – Executive Test

- The employee must have the primary duty of the management of the enterprise in which the employee is employed or of a customarily-recognized department or subdivision thereof;
- The employee must customarily and regularly direct the work of two or more other employees; and
- The employee must have the authority to hire or fire other employees or be one whose suggestions and recommendation as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.
Duties Test – Administrator Test

- Must perform administrative duties. Two part inquiry examines:
  - Type of work the employee performs; and
  - Level or nature of work performed.
- The employee must have a primary duty of performance of office or non-manual work directly related to management or general business operations of the employer or the employer’s customers; and
- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
Duties Test – Professional Test

- The employee must have the primary duty 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 (learned professional)
  - Law, medicine, theology, accounting, engineering, teaching, and the physical, chemical and biological sciences.
  - Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor (creative professional).
- The work being performed must require knowledge of an advanced type.

- NOTE: If the employee has an advanced degree but the work does not require that level of education, the employee will not qualify for the exemption.
Positions of Interest Not Impacted by New Regulations

Teachers, Substitutes
- Primary duty is teaching, tutoring, instructing, lecturing, imparting knowledge.
- These positions are Exempt from the overtime rule and therefore not eligible for overtime compensation.

Teachers/Coaches
- Teachers who also coach are Exempt from the overtime rule and therefore not eligible for overtime compensation.
- Coaching is considered to be part of a schools’ responsibility to contributing to the educational development of students.

The above positions remain Exempt and do not require application of the salary level test.
Positions of Interest Not Impacted by New Regulations

- Academic Administrators
  - Superintendents, Assistant Superintendents, Principals, APs, Academic Counselors, Librarians
  - These positions are Exempt from the overtime rule and therefore not eligible for overtime compensation.
  - To be Exempt, an academic administrator must:
    - Be compensated on a salary or fee basis of at least $913.00/week or on a salary basis that is at least at the entry level salary for teachers in the same educational establishment; and,
    - Have a primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment, department or subdivision
Other Positions of Interest

- Aides, Paraprofessionals, Maintenance, Custodial, Food Service Workers, Secretaries, Payroll Clerks, Bus Drivers, Bus Monitors, Bookkeepers

  - Generally, Non-Exempt employees.
  - If an employee does meet the salary-level test, then a determination should be made to see whether the employee meets either the Executive, Administrator or Professional duties tests.
  - Keep an eye on the salaries and duties for directors, managers, supervisors, and the like.
  - Keep an eye on administrators who are not performing functions directly related to academic instruction.
Other Positions of Interest

**Nurses**
- Exempt: Registered nurses (RNs) on salary who earn $913.00/week are Exempt employees.
- Non-Exempt:
  - Paid on an hourly-basis
  - Licensed vocational nurses (LVNs) and licensed practical nurses are Non-Exempt employees under most circumstances.

**Instructional Coach:** Possibly exempt as an “academic administrator”

**Speech Pathologist:** Not exempt as a “Teacher,” but potentially Exempt under the Professional duties test so long as SP earns $913.00/weekly.

**Part-Time Employees:** Still Subject to salary level test regardless of FT or PT employment.

**Physical Therapist, Occupational Therapist, LSSP:** Not Exempt as a “Teacher,” but potentially Exempt under the Professional duties test so long as Salary Test met.
Other Positions of Interest – Highly Compensated Employees (HCEs)

- HCEs are Exempt from overtime compensation so long as they meet the following 3 part test:

1. Meet the salary-level test specific to HCEs
   - Current Regulations: $100,000 annual salary
   - New Regulations: $134,004 annual salary
     - Set at the 90th percentile of earnings of full-time salaried workers nationally.

2. The employee must customarily and regularly perform any one or more of the Exempt duties or responsibilities of an executive, administrative, or professional employee; and

3. The employee must perform office or non-manual work.
School District Employees/Positions Likely Impacted by New Regulations

- Employee who are currently Exempt and make between $455.00/week and $913.00/week (new salary level test).

- Positions that may be impacted (non-exhaustive list):
  - Finance
  - Maintenance
  - Operations
  - Directors
  - Executive Directors
  - Other Administrators who earn less than $913.00/weekly.
Summary of Key Changes in the New Regulations

- All employers must be in compliance by December 1, 2016.
- Teachers and academic administrators remain classified as Exempt.
- Minimum salary threshold has been raised to $913.00/week, amounting to $47,476/year.
- Minimum salary threshold for highly compensated employees has been raised to $134,004/year.
- Minimum salary threshold will be changed every three years, with a firm January 1 date beginning January 1, 2020.
- There is no change to the “duties” tests.
Options for Employees Who Will Now Be Non-Exempt

- **Option 1**: Raise salaries to meet the $913.00/week salary threshold in order for these employees to remain Exempt.

- **Option 2**: Treat these employees as Non-Exempt and subject to overtime compensation.
  - Overtime
  - Extracurricular activities
  - Working from home
  - District use of devices when off the clock
  - Travel
  - Lunch
  - Training
  - Waiting
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