

New FLSA Regulations for Exempt Employees Fact Sheet

The U.S. Department of Labor (DOL) has published regulation changes to the Fair Labor Standards Act (FLSA) for exempt “white collar” workers. The new regulations will go into effect beginning August 23, 2004.

The following highlights the changes:

- The salary test has increased from weekly minimum salary of \$155 to \$455 or \$23,660 per year. This applies to both full-time and part-time employees regardless of hours worked. This minimum salary does not include lodging, boarding or other facilities incurred by an employer. Employees earning lower than \$455 per week are not exempt employees and are paid for hours worked. For employees paid by two state departments, the salaries must be combined for this salary test.
- For highly compensated employees, exempt status can be designated if the total annual compensation is at least \$100,000 (may be prorated). Total compensation includes commissions and non-discretionary bonuses, and employees must perform any one of the exempt duties identified in the standard tests.
- Employers may make deductions from an exempt employee’s pay, in full-day increments, for violation of certain workplace conduct rules. (The state will continue to do full-week pay deduction until current rule is revised.)
- DOL has an allowance to correct improper salary deductions, “Safe Harbor”, for isolated or inadvertent deductions if the following occur:
 - Employer reimburses the employee.
 - Employer has a clearly communicated policy prohibiting improper deductions and includes in a complaint process.
 - Employer makes a good faith commitment to comply in the future.Safe Harbor will not be applicable if an employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

To ensure compliance with the new regulations, departments need to do the following by August 23.

Human Resource Office

Communicate FLSA regulations to employees (preferably in Employee Handbook) including:

- Develop a process for employees to request a review of the exemption designation,
- Develop a process for correcting improper salary reduction, i.e., reimburse the incorrect deduction,
- Develop a process for unpaid disciplinary suspensions,
- Distribute FLSA policy to employees,

- Inform employees of their exemption status in writing and their right to request a review of their FLSA designation, and,
- Apply new minimum salary test to part-time employees and re-designate exemption status if necessary.

Payroll/Budget Office

- HR/Budget officer examines exempt employees (full-time or part-time) salaries to comply with the new minimum salary requirement.,
- Agencies conduct internal review of duties by position basis, particularly exempt positions,
- Alert supervisors of potential exemption status change to reduce overtime liability beginning August 23, 2004, and,
- Do not convert part-time salary to full-time basis when testing minimum salary requirement.

For questions, please contact Joi Simpson at 303.866.5496 or joi.simpson@state.co.us.

**“White-Collar” (Exempt Employees) Exemption Duties Tests
DOL – August 23, 2004**

Annual Salary (Applicable to both full- and part-time employees)	Regulations Prior to August 23, 2004	New Regulations beginning August 23, 2004
Less than \$8,060	Overtime Eligible	Overtime Eligible
\$8,060 - \$13,000	Long Duties Test	Overtime Eligible
\$13,000 - \$23,660	Short Duties for Higher Salaried Employees	Overtime Eligible
\$23,660 - \$100,000	Short Duties for Higher Salaried Employees	Standard Duties Test
\$100,000 or more	Short Duties for Higher Salaried Employees	Highly Compensated Test
Other Major Regulation Changes		
Issue	Current Regulation	New Regulation
“Safe Harbor” Rule	Window of Correction	More detailed guidelines for correcting improper pay reduction
Pay Reduction	Full weekly pay reduction for safety violation	Daily pay reduction for safety violation and work code violation
Salary Test	Long and short tests	Standard test to replace long and short tests

Source: U.S. Department of Labor
Summarized by Sue Huang
August 2004