



The New Fair Labor Standards Act

On April 20, 2004, the U.S. Department of Labor (DOL) issued the revised and final Fair Labor Standards Act (FLSA) regulations that have been under review for more than a year. The DOL reviewed the antiquated Act with the goal of revising it to protect the overtime rights of lower-wage workers and to clarify the interpretation of the Act for employers.

The new and final regulations protect the overtime eligibility for more white-collar workers in all salary ranges than the DOL's March 2003 proposed regulations. The new and final FLSA regulations are expected to become effective in August 2004, 120 days following its publication in the Federal Registrar (expected within days). **This means employers have approximately 120 days to comply with the new regulations by reviewing the exemption status of each employee to ensure compliance with revised FLSA.**

Major Changes

The final regulations make several changes to the manner in which employers apply the FLSA test and determine the exemption status of positions. We highlight below a few of the major changes that may affect your organization:

1. Increased Salary Basis Test. The salary threshold has been increased from \$425 (\$22,100 annually) to \$455 per week (\$23,660 annually). Therefore any employee earning less than \$23,660 automatically qualifies for overtime pay.

2. Increased Salary of Highly Compensated Employees. Defined as employees earning \$100,000 per year or more and who "customarily" and "regularly" perform executive, administrative or professional responsibilities (as defined in the Act) are exempt from the overtime requirements. Formerly, employees earning \$65,000 annually were considered "highly compensated" under the Act.

3. Modified Executive Duties Test. Executives are no longer required to "regularly exercise discretionary judgment" in order to qualify as exempt (as they were to under the former legislation). As defined in the Act, an "executive" is an individual whose primary duty is managing an enterprise, department or subdivision, who customarily directs the work of two or more employees and under the new provision has the authority to hire or fire other employees or whose recommendation as to employee status changes carry "particular weight."

4. Blue Collar Workers. The exemption status does not apply to manual laborers who perform repetitive work with their hands, physical skill and energy. Non-management employees in production, main-

tenance, construction and similar occupations are entitled to the minimum wage and overtime pay (no matter how highly compensated).

5. Time devoted to nonexempt work. There are no longer requirements that executive, administrative, professional and computer employees devote no more than 20% of their time to nonexempt work in order to qualify as exempt (as was required by the former legislation).

6. Business Owners who own at least 20% equity interest in their company must be actively engaged in the management of the company to qualify as exempt.

7. Business Owners must still have the authority to hire or fire other employees or their suggestions and recommendation as to the hiring, firing or any other change of status of other employees must be given “particular weight,” as in the former FLSA.

For additional information and an FLSA classification audit, contact Michelle Geddes, Managing Director, HiRe Expectations at **(703) 770-6343** or **mgeddes@hire-expect.com**. HiRe Expectations, AWR’s human resources and management consulting practice, develops cost effective workforce solutions that improve workforce productivity and minimize the potential for employment-related litigation. You can find additional information on the FLSA under HR Articles on the HiRe Expectations website at **www.hire-expect.com**.

Employers who do not assess their workforce to ensure correct classification of employees under the FLSA risk costly DOL audits, employee class action lawsuits and the resultant monetary penalties. As a point of interest, Business & Legal Reports (BLR), Inc., notes that the number of class action wage and hour suits increases annually as plaintiff’s attorney’s recognize the potential for large payouts; DOL wage and hour settlements have reached an all-time high with record increases in the back pay settlements and civil monetary penalties; and it is estimated that more than one-half of employers incorrectly classify employee’s under the FLSA.