

Summary of Federal Overtime Revisions

WIGGIN AND DANA

Counsellors at Law

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On April 23, 2004, the United States Department of Labor (DOL) published its final rule regarding the wage and hour overtime exemptions. Expected to become effective on August 23, 2004, the rule revises existing regulations governing the payment of overtime to employees under federal law. As noted below, the final rules vary in some significant ways from the proposed rule that was published in March 2003.

FINAL RULE SUMMARY

Minimum Salary Test

In order to be exempt from the overtime regulations, employees must earn at least \$455 per week or \$23,660 per year. (Previously the threshold was \$8,060 per year).

Duties Test

In addition to being paid a minimum salary of \$23,660 per year, employees must have certain job duties to be considered exempt. Specifically:

Executive Exemption: To be eligible for the executive exemption, an employee must (1) have as his/her primary duty the management of the enterprise or of a customarily recognized department or subdivision thereof; (2) customarily and regularly direct the work of two or more employees; and (3) have authority to hire or fire other employees or have his/her recommendations as to these actions be given particular weight.

The final rule removes the exemption for "sole charge" executives that existed in the

proposed rule, and includes a definition of "particular weight" that was not included in the earlier proposed rule. In another change from the earlier version, the final rule provides that owners of at least 20% equity interest are exempt only if "actively engaged in its management."

Administrative Exemption: To fall within the administrative exemption, an employee must (1) have as his/her primary duty the performance of work directly related to the management or general business operations of the employer or the employer's customers; and (2) as part of this primary duty, exercise discretion and independent judgment with respect to matters of significance.

The final rule eliminates both the "position of responsibility" test and the "high level of skill or training" standard that had been included in the March 2003 proposed rule. In their place, the rule reverts back to the traditional "exercise of discretion and independent judgment" test. The DOL specifically notes that employees in the financial services industry generally meet the duties requirements for the administrative exemption if their duties include work such as: collecting and analyzing information regarding the customer's income, assets, investments or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing or promoting the employer's financial products. Employees whose primary duty is selling

financial products, however, do not qualify for the exemption.

Professional Exemption: An employee will meet the requirements of the professional exemption if his/her primary duty is: (1) 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; or (2) the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

The final rule defines "work requiring advanced knowledge" as "work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment." It deletes references to equivalent training as sufficient to meet the requirements of the exemption. It also makes clear that licensed practical nurses and paralegals are generally not exempt under the professional exemption.

Specific Issues

Highly Compensated Workers: The final rule increases the threshold from the \$65,000 outlined in the March 2003 proposal to \$100,000. An employee earning \$100,000 per year may be exempt if he/she performs non-manual work and

customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Blue Collar Workers: The rule makes clear that exemptions do not apply to manual laborers or other "blue collar" workers. Specifically, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers remain non-exempt.

Docking of Pay: Under the final rule, employers may now dock an exempt employee's pay for disciplinary suspensions of one or more full days imposed in good faith for violations of workplace conduct rules.

What this Means for Connecticut Employers

It remains unclear what impact the revisions to the federal overtime regulations will have on Connecticut employers. Certainly Connecticut's lower salary threshold will be affected (i.e., Connecticut allows employees earning more than \$400 per week to be considered exempt under certain circumstances; the federal rule has effectively raised this

to \$455 per week). In most circumstances, however, Connecticut's definitions of exempt, administrative and professional employees are more narrow than the new federal rules. As a result, an employer who revises exempt classifications based solely on the federal rule bears the risk of running afoul of Connecticut law.

Practical Suggestions

With the changes in the federal regulations receiving significant publicity, more employees may be raising questions about their entitlement to overtime pay. Employers need to be prepared to answer these questions with confidence that they are in compliance with all wage and hour laws. Employers are well-advised to take this opportunity to review job descriptions and classifications to ensure that all jobs have been properly designated as exempt or non-exempt.

Further information is available through the DOL's website at www.dol.gov/fair-pay. Anyone with questions should feel free to contact Steve Harris, Peter Lefebber or John Zandy at 203.498.4400; Larry Peikes at 203.363.7609; or Marcia Keegan at 860.297.3733.

The next meeting of Wiggin and Dana's Human Resources Circle will be devoted to the revisions discussed in this advisory. It will be held on May 25 at 8:30 a.m. at the New Haven Lawn Club. Our featured speaker will be Ron Marquis, the Assistant Director of Wage and Workplace Standards Division, Connecticut Department of Labor. Mr. Marquis will lead the discussion on What Do the Revisions to the Federal Regulations Mean for Connecticut Employers.

Participation in the Circle is free of charge. If you are interested in attending, please contact Celia Paiva at 860-297-3742 or cpaiva@wiggin.com to reserve a spot. Please also feel free to invite anyone else who may want to join us. If, after registering, you find that you will be unable to attend, we ask that you please provide 24 hours notice.

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