

RECENT DEVELOPMENTS IN WAGE AND HOUR LAW*

Donald F. Burke, Esq.
Edward J. Gutman, Esq.

The U.S. Department of Labor has revised the "white-collar" exemptions to the Fair Labor Standards Act (FLSA) with the final rules published in the Federal Register on April 23, 2004. These rules will take effect 120 days following publication, on August 23, 2004.

BACKGROUND: THE FLSA & "WHITE COLLAR" EXEMPTIONS

The FLSA generally requires covered employers to pay employees at least the federal minimum wage for all hours worked (currently \$5.15/hour), and overtime premium pay of one-and-one-half times the regular rate of pay for all hours worked over 40 hours in a single workweek. However, the FLSA includes a number of exemptions from the minimum wage and overtime requirements. Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for certain employees who are paid more than a specific minimum amount of salary and are "employed in a bona fide executive, administrative, or professional capacity.....or in the capacity of outside salesman....." 29 U.S.C. 213(a)(1).

Congress has never defined the terms "executive," "administrative," "professional," or "outside salesman." Pursuant to Congress' specific grant of rule-making authority, the Department of Labor ("Department") has issued implementing regulations, at 29 CFR Part 541, defining the scope of the section 13(a)(1) exemptions. The FLSA delegates to the Department the power to define and delimit the specific terms of these exemptions and therefore, the regulations so issued, have the binding effect of law.

The major substantive provisions of the Part 541 regulations have remained unchanged for nearly 50 years. Suggested changes to the Part 541 regulations have been the subject of extensive

public commentary for two decades. In response to the extensive public commentary, the Department, on March 31, 2003, published proposed revisions to these regulations in the Federal Register inviting public comments for 90 days. The Department received a total of 75,280 comments during the official comment period from a wide variety of employees, employers, trade and professional associations, small business owners, labor unions, government entities, law firms and others. After considering all of the relevant comments, the Department made numerous changes to the proposed rules and thereafter, on April 23, 2004 codified the final rules in the Federal Register. The final regulations significantly changed the salary level requirements and job duties tests for white collar employees.

PURPOSE FOR THE CHANGES TO THE RULE

The protections afforded by the minimum wage and overtime pay requirements of the FLSA have been significantly eroded because the Department has not updated the regulations for many years. The minimum "salary test" was last updated in 1975, almost 30 years ago. The job duties requirements have not been changed since 1949, nearly 55 years ago. The Department believes that changes to the salary and the duties tests are essential to (1) restore the overtime protections intended by FLSA, (2) clarify the previous tests and broaden their explanations, and (3) improve compliance and reduce litigation.

SCOPE OF THE WHITE COLLAR EXEMPTIONS

For an employee to qualify under the new white collar exemptions, the following requirements must be met (ALL of them):

1. The employee must be paid a pre-determined and fixed salary that is not subject to reductions because of variations in the quality and quantity of work performed ("**the salary basis test**"),

2. The amount of salary paid must meet the minimum amounts specified in the regulations ("**the salary level test**"),

AND

3. The employees' job duties must primarily involve executive, administrative, professional, computer or outside sales' duties as defined by the regulations ("**the duties tests**").

Job Title by itself has no Weight: The new regulations specifically state that a "job title" alone is insufficient to establish an employee's exempt status. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations.

Employees Excluded from White Collar Exemptions: The final regulations, however, explicitly exclude certain categories of workers from the scope of the white collar exemptions even if such workers meet all the three requirements stated in the preceding paragraph. Such categories of workers include:

- (a) "**Blue collar**" workers who perform work involving repetitive operations with their hands, physical skill and energy, such as non-management production line employees, non-management maintenance employees, carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, labor-men, etc.

AND

- (b) **"First responders,"** such as police officers, firefighters, paramedics, emergency medical technicians, state troopers, inspectors, investigators, park rangers, rescue workers, emergency employees, etc.

FLSA Standards may be Exceeded but NOT Waived or Reduced: Additionally, the new regulations provide that the minimum wage and overtime standards promulgated by the FLSA may be exceeded, but cannot be waived or reduced. Thus, the regulations allow employers to enter into collective bargaining agreements providing wages higher than the statutory minimum, a shorter workweek than the statutory maximum or a higher overtime premium (double time, etc.).

OVERVIEW OF THE WHITE-COLLAR EXEMPTIONS UNDER THE NEW REGULATIONS

I. TESTS FOR THE WHITE COLLAR EXEMPTIONS

As discussed in the preceding section, an employee must meet three requirements to qualify for the white collar exemption: (1) **Salary-Basis Test:** the employee must be paid on a "salary basis," that is at a fixed pre-determined amount without regard to the quality or quantity of worked performed, (2) **Salary-Level Test:** the employee must be paid a minimum amount of salary as required by the regulation, **AND** (3) **Duties Test:** the employees must primarily perform executive, administrative, professional, computer or outside sales' duties as defined by the regulations. Additionally, the revised regulations introduce a new provision under which a "**highly compensated**" employee may be classified as an exempt employee if certain requirements are met.

A. SALARY BASIS TEST

To be classified as "exempt," the employee must be paid on a salary basis, that is, the employee must receive a predetermined amount of compensation each pay period on a weekly, or

less frequent basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. With a few identified exceptions, the employee "must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked." If deductions are made from the employee's pre-determined salary because of operating requirements of the business, that employee is not paid on the "salary basis." If the employee is ready, willing and able to work, deductions may not be made for time when there is no available work. The employer is permitted to make deductions from employee's pay without losing the exempt status for only "certain" reasons as described below.

1. Allowable Deductions from the Employee's Pay without Losing the Exempt Status

The revised regulations permit the employers to deduct from the employee's pay "one or more full days" without jeopardizing the employee's exempt status for the following reasons:

- a.** Absences for personal reasons other than sickness or disability;
- b.** Absences for sickness or disability (including work-related accidents) if the deduction is made pursuant to a bonafide plan, policy of providing compensation for salary lost due to illness;
- c.** To offset amounts employees receive for jury duty, witness fees or for military pay;
- d.** For penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to

other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines;

- e. For disciplinary suspensions imposed in good faith for violation of workplace conduct rules such as sexual harassment or workplace violence. Such suspensions must be imposed pursuant to a written policy applicable to all employees. *This disciplinary deduction was not available in the old regulations;*
- f. Full salary is not required to be paid in the initial or terminal week of the employment (proportionate part of the employee's full salary may be paid) (*New*); OR,
- g. For unpaid leave taken pursuant to the Family and Medical Leave Act (*New*).

2. Effect of Improper Deductions from Salary

Employers may lose the exemption status for their employees if the facts demonstrate that the employer has an "actual practice" of making improper deductions. Factors that are considered when determining whether the employer has an actual practice of making improper deductions include, but are not limited to:

- a. The number of improper deductions compared to the number of employee infractions warranting discipline,
- b. The time period during which employer made improper deductions,
- c. The number and geographical location of both the employees whose salary is improperly reduced, and the managers responsible, and

- d. Whether the employer has a clearly communicated policy allowing or prohibiting improper deductions.

If an "actual practice" is found, the exemption is lost during the time period of deductions for employees in the same job classification working for the same managers responsible for improper deductions.

3. Safe Harbor for Employers

An employer will NOT lose the exemption for any employees for making improper deductions from their pay if the employer:

- a. Has a clearly communicated policy that prohibits improper pay deductions, including a complaint mechanism,
- b. Reimburses employees for any improper deductions, and
- c. Makes a good faith commitment to comply in the future.

However, the employer is subject to the lose of exemptions if the employer willfully violates public policy by continuing the improper deductions even after receiving employee complaints.

B. SALARY LEVEL TEST

To qualify as an exempt under the final regulations, the employee must be paid the minimum amount of salary required by the regulations. The final rule nearly tripled the current \$155 per week minimum salary level required for exemption to \$455 per week (or \$380 per week if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities. For computer employees, the salary requirement may be met by payment of an hourly basis at a rate of not less than \$27.63 an hour. Costs incurred by the employer in providing the employee with board, lodging or other facilities will not count towards the minimum salary

required for exemption under the new regulation. Employees paid below the salary minimum are not exempt, irrespective of their job duties and responsibilities. Employees paid a salary at or above the minimum level are exempt only if they also meet the salary basis and the duties tests. The \$455 per week minimum salary requirement is equivalent to \$23,660 per year. \$455 per week may be translated in the following equivalent amounts for periods of longer than one week, but may not be translated into a period of payment shorter than one week (such as \$91 per day):

| | |
|---------------------------|-------------|
| Weekly Compensation | \$ 455 |
| Bi-Weekly Compensation | \$ 910 |
| Semi-monthly Compensation | \$ 985.83 |
| Monthly Compensation | \$ 1,971.66 |

1. Additional Compensation

Employers may provide exempt employees with additional compensation without losing the exemption or violating the salary basis requirement, if the employee is guaranteed the minimum weekly amount required by the regulations. Such additional compensation includes sales commissions or overtime compensation, paid based on the hours worked beyond the normal workweek.

2. Mode of Computation/Payment

An exempt employee's earnings may be computed on an hourly, daily, or shift basis, without losing the exemption status, **ONLY** if the following requirements are met:

- a.** The employment arrangement includes a guarantee of at least the minimum weekly required amount paid on the salary basis regardless of the number of hours, days or shifts worked, AND

b. Reasonable relationship exists between the guaranteed amount and the amount actually earned.

(1) For example: An exempt employee is guaranteed compensation of at least \$500 per week in which the employee performs any work and the employee normally works 4-5 shifts per week. In such a situation, the employee can be paid \$150 per shift without violating the salary basis requirement.

3. Fee Basis

Administrative, professional or computer employees may be paid on a "fee basis" rather than on a "salary basis," which means that employees may be paid an agreed sum for a single job regardless of the time required for the completion. A fee payment is generally paid for a unique job, rather than for a series of jobs repeated a number of times and for which identical payments are repeatedly made. However, the fee payment must meet the minimum amount of salary required for exemption under the final regulations.

To determine whether the fee payment meets the minimum salary level requirements, the test is to consider the time worked on the job and ascertain whether the payment is at a rate that would amount to at least \$455 per week if the employee worked 40 hours. For example, an artist paid \$250 for a picture that took 20 hours to complete meets the minimum salary requirement, since the rate would yield \$500 if 40 hours were worked.

C. DUTIES TEST

The previous rules included a "short duties test" and a "long duties test" for determining the exempt status. Employees paid between \$155 to \$250 per week were exempt if they met the "long duties test." Employees paid above the salary rate of \$250 per week were exempt if they met only the "short duties test." The short test contained few requirements and was less burdensome to meet.

The new regulations abandoned the short and long tests and formulated a "standard duties test" for employees who are paid a minimum salary of \$455 per week.

1. Duties Test for Executive Employees

To qualify for the executive employee exemption ALL of the following requirements MUST be met:

- a. The employee must be compensated on a salary basis at a rate not less than \$455 per week,
- b. The employee's **primary duty** must be **managing** the enterprise, or managing a customarily recognized department or subdivision thereof,
- c. The employee must customarily and regularly **direct** the work of at least **two or more other full-time employees** or their equivalent,
AND
- d. The employee must have the **authority to hire or fire** other employees, or whose suggestions and recommendations as to hiring, firing, advancement, promotion or any other change of status of other employees are given "**particular weight.**"

Primary duty means the principal, main, major or most important duty that the employee performs. Determination of the employee's primary duty must be based on all facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Management, generally includes but is not limited to activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for promotions or change in status; planning the work; determining techniques to be used; apportioning work among employees; determining the types of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked or sold; controlling flow of distribution of materials, merchandise or supplies; providing for safety and security of employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

One **full-time and two half-time employees** are equivalent to two full-time employees. **Supervision** may be distributed among two or more employees, however, each employee must regularly direct the work of two or more full-time employees or their equivalent. For example, a department with five full-time nonexempt workers may have up to two exempt supervisors, if each supervisor directs the work of two of those workers.

Factors to be considered in determining whether the executive employee's recommendations are given **particular weight** include, but are not limited to, whether it is part of the employee's job duties to make such recommendations, and the frequency with such recommendations are made, requested and relied upon.

An employee's suggestion may still be deemed to have **particular weight** even if a higher level manager's recommendations has more importance and even if the employee does not have the authority to make the ultimate decision as to the employee's change in status.

Generally an **executive's recommendations** must pertain to employees whom the executive customarily and regularly **supervises**. It does not include occasional suggestions.

Exemption for Business Owners (Special Rule): Additionally, the new regulations include a special rule for business owners, an employee who owns at least a bona fide 20% equity interest in the enterprise in which employed, regardless of the type of business organization (partnership, corporation or other), and who is actively engaged in its management, is considered a bona fide exempt executive.

2. Duties Test for Administrative Employees

To qualify for the administrative employee exemption, ALL of the following requirements must be met:

- a.** The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week,
- b.** The employee's **primary duty** must be the performance of **office or non-manual work directly related to the management** or general business operations of the employer or the employer's customers,
AND
- c.** The employee's **primary duty** includes **exercise of discretion and independent judgment** with respect to **matters of significance**.

Primary duty means the principal, main, major or most important duty that the employee performs. Determination of the employee's primary duty must be based on all facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

To meet the "**directly related management or general business operations**" requirement, the employee must perform work directly related to assisting with the running or the service of the business, as distinguished, from working on a manufacturing production line or selling a product in a retail or service establishment.

Work **directly related to management or general business operations** includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet and database administration; legal and regulatory compliance; and similar activities. Employees acting as advisors or consultants to their employer's clients or customers, for example, as tax experts or financial consultants, may also be exempt under this category.

Exercise of **discretion and independent judgment** involves the comparison and evaluation of possible courses of conduct, and acting or making a decision after various possibilities are considered. However, the phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular employment situation in which the question arises.

The term **matters of significance** refers to the level of importance or consequence of the work performed.

Examples: The final regulations provide the following examples of administrative employees, along with details about the duties that may satisfy the duties test for this exemption:

- Insurance claim adjusters;
- Employees in the financial service industry;
- Project team leaders;
- Executive assistant or an administrative assistant to a business owner or to a senior executive of a large business;
- Human resource managers who formulate, interpret or implement employment policies and management. However, personnel clerks who "screen" applicants to obtain data are NOT exempt under this category;
- Purchasing agents who have the authority to bind the company on significant purchases; and
- Management consultants who study the operations of a business and propose changes in organization.

The following employees **are NOT exempt** under this category:

- Inspectors who perform specialized work along standardized lines involving well-established techniques and procedures;
- Examiners or graders who normally perform work involving the comparison of products with established standards which are frequently catalogued; and

- Public sector inspectors or investigators of various types, such as fire prevention or safety, building or construction, health or sanitation, environmental or soil specialists and similar employees.

Educational Establishment (Special Rule): Additionally, the administrative exemption is also available to employees who are paid on a salary or a fee basis \$455 per week and whose **primary duty** is performing **administrative functions** directly related to academic instruction or training in "educational establishment."

Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system and any assistants responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of teaching programs; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the various subject matter departments; academic counselors and other employees with similar responsibilities.

3. Duties Test for Learned Professional Employees

To qualify for the learned professional employee exemption, ALL of the following requirements must be met:

- a. The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week,
- b. The employee's **primary duty** must be in **performance of work** requiring advanced knowledge, which is **predominantly intellectual**

in character and which includes work requiring the consistent exercise of discretion and judgment,

- c. The advanced knowledge must be in a **field of science or learning**,
- AND**
- d. The advanced knowledge must be customarily **acquired** by a **prolonged course of specialized intellectual institution.**

Primary duty means the principal, main, major or most important duty that the employee performs. Determination of the employee's primary duty must be based on all facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Professional work is work that is intellectual in character and therefore does not include routine mental, manual, mechanic or physical work. A professional employee generally uses advanced knowledge to analyze, interpret or make deductions from various facts or circumstances. Advanced knowledge cannot be attained as high school level.

Exemption may be available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as employees who have degrees, but who **attained the advance knowledge through a combination of work experience and intellectual instruction.** However, this exemption does not apply to occupations in which most employees acquire their skill by experience rather than by advanced specialized intellectual instruction.

Field of science or learning include law; medicine; theology; accounting; actuarial; computation; engineering; architecture; teaching; various types of chemical, physical and biology sciences; pharmacy and other occupations that have a recognized professional status and are

distinguishable from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type, but is not in the field of science or learning.

Examples: The final regulations include the following categories of employees that may satisfy the duties tests for the learned professional exemption, along with detailed descriptions of the specific requirements under each category:

- Registered or certified medical technologists;
- Registered nurses who are registered by the appropriate State examining board. However licensed practical nurses and other similar health care employees generally are not exempt;
- Dental hygienists;
- Physician assistants;
- Accountants: Certified public accountants and other accountants who perform similar duties meet the requirements of this exemption. However accountant clerks, bookkeepers and other employees who normally perform routine work do not qualify as exempt under this category;
- Chefs: Executive chefs and sous chef who have attained a four year specialized academic degree qualify for the learned professional exemption. However, this exemption is not available to cooks who perform predominantly routine mental, manual, mechanical or physical work;

- Generally, paralegals and legal assistants are NOT exempt as learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. However, paralegals who possess advanced specialized degrees in other professional fields and apply their advanced knowledge in the performance of paralegal duties are exempt;
- Athletic trainers; and
- Funeral directors or embalmers.

4. Duties Test For Creative Professional Employees

To qualify for the creative professional employee exemption, ALL of the following requirements must be met:

- a. The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week,

AND
- b. The employees's **primary duty** must be the performance of work requiring **invention, imagination, originality or talent** in a recognized **field of artistic or creative endeavor**.

Primary duty means the principal, main, major or most important duty that the employee performs. Determination of the employee's primary duty must be based on all facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Invention, Imagination, Originality or Talent: Exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee. Therefore, whether the exemption applies depends on a case-by-case basis.

Field of artistic or creative endeavor, generally include, but is not limited to, actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, novelists, and others set forth in the regulations.

Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality or talent. Journalists are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product.

5. Duties Test for Employees in Computer-Related Occupations

To qualify for the computer employee exemption, ALL of the following requirements must be met:

- a. The employee must be compensated either on a salary or fee basis at a rate not less than \$455 per week OR, if compensated on an hourly basis, at a rate not less than \$27.63 an hour,

AND

- b. The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the **computer field performing the duties described below:**

- (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications,
- (2) The design development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications,
- (3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems,
OR
- (4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

This exemption category does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Additionally, employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs but are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations are not exempt. The regulations state that job titles are not determinative of the applicability of this exemption, because job titles in this industry vary widely and change quickly. Therefore, it is very essential to review the actual job duties of the computer employees to ensure that the employees are properly treated under the FLSA.

6. Duties Test for Outside Sales Employees

To qualify as an exempt outside sales employee, ALL of the following requirements must be met:

- a. The employee's **primary duty** must be **making sales**, or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer,

AND

- b. The employee must be customarily and regularly engaged **away from the employer's place of business.**

In determining **primary duty of an outside sales employee**, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, or that furthers the employee's sales efforts shall be regarded as exempt outside sales work. These activities include incidental deliveries and collections, writing sales reports, updating or revising the employee's sales or display catalog, planning itineraries and attending sales conferences.

An **outside sales** employee must make sales at the customer's place of business, or if selling door-to-door, at the customer's home. Outside sales do not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls.

Drivers who deliver and sell products may qualify as exempt outside sales employees only if such employees have a primary duty of making sales.

Salary Basis & Salary Level Requirements NOT Applicable: The salary requirements of the regulation do not apply to the outside sales exemption. An employee who does not satisfy

the requirements of the outside sales exemption may still qualify as an exempt employee under one of the other exemptions.

II. TEACHERS

Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics instructors; and vocal and instrument music teachers. **The salary level and the salary basis tests do NOT apply to bona fide teachers.**

III. PRACTICE OF LAW AND/OR MEDICINE

An employee holding a valid license or certificate permitting the practice of law or medicine is exempt if the employee is actually engaged in such a practice. An employee holding the requiring academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession. **The salary level and the salary basis requirements do NOT apply to bona fide practitioners of law and medicine.**

IV. HIGHLY COMPENSATED EMPLOYEES

The revised regulations include a new provision under which "highly compensated employees" may more readily be classified as exempt. A highly compensated employee is deemed exempt if ALL of the following requirements are met:

1. The employee earns **total annual compensation of \$100,000**, or more, which includes at least \$455 per week paid on a salary basis,

2. The employee's **primary duty** includes performing **office or non-manual work**,
 - a. Blue collar employees, no matter how highly compensated they may be, are not exempt.

AND

3. The employee customarily and regularly **performs at least one of the exempt duties** or responsibilities of an exempt executive, administrative or professional employee.
 - a. Duties of the computer-related occupations NOT included.

The total **annual compensation of \$100,000** or more may consist of commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period, but does not include credit for board or lodging, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits.

There are **special rules for prorating the annual compensation** if employees work only part of the year, and which allow payment of single lump-sum, make-up amounts to satisfy the required annual amount at the end of the year and similar make-up payments to employees who terminate before the year ends.

EFFECT OF OTHER LAWS

The revised rules contain an express statement about the effect of other laws on FLSA compliance. The regulations provide that the minimum FLSA standards may be exceeded at the state or municipal level, but may not be waived or reduced. Employers must comply with any federal,

state, or municipal laws or regulations establishing a higher maximum wage or lower maximum workweek than those established under the Act.

IMPLEMENTING THE RULES — TO DO LIST FOR EMPLOYERS

- 1. Identify employees who earn less than \$23,660:** Evaluate whether payroll costs will be best controlled by increasing their salaries to retain their exempt status, provided they still met the duties test;
- 2. Identify employees who earn \$100,000 or more:** Previously nonexempt high earners may likely be exempt now;
- 3. Conduct Job Duties Analyses:** Conduct comprehensive job duties analyses to determine which employees perform administrative, professional, executive, computer or outside sales duties as defined by the new regulations;
- 4. Revise Job Descriptions:** Following comprehensive job analyses, revise position descriptions accordingly. Make sure the description truly reflect the work performed and skills required; and
- 5. Revise your Disciplinary Policy:** Ensure your disciplinary policy reflects the new changes to the regulations, take advantage of this new option.

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