

IMPACT OF THE NEW FLSA REGULATIONS

William A. Harding, Esq.
Harding, Shultz & Downs
Lincoln, Nebraska

402/434-3000

402/434-3030-Fax

E-Mail: wharding@hsdlegal.com

Website: www.hsdlegal.com

REGULATIONS

- ▶ Part 516 - **Recordkeeping**
- ▶ Part 541 - White Collar **Exemptions**
- ▶ Part 553 - Application of the FLSA to Employees of **State** and **Local** Governments
- ▶ Part 778 - **Overtime**
- ▶ Part 785 - **Compensable** Time

Proposed Regulations

- ▶ Part 541 - White Collar Exemptions
- ▶ March 31, 2003 - Federal Register
- ▶ Written Comments by June 30, 2003.
- ▶ **Final regulations expected by 3/1/04.**

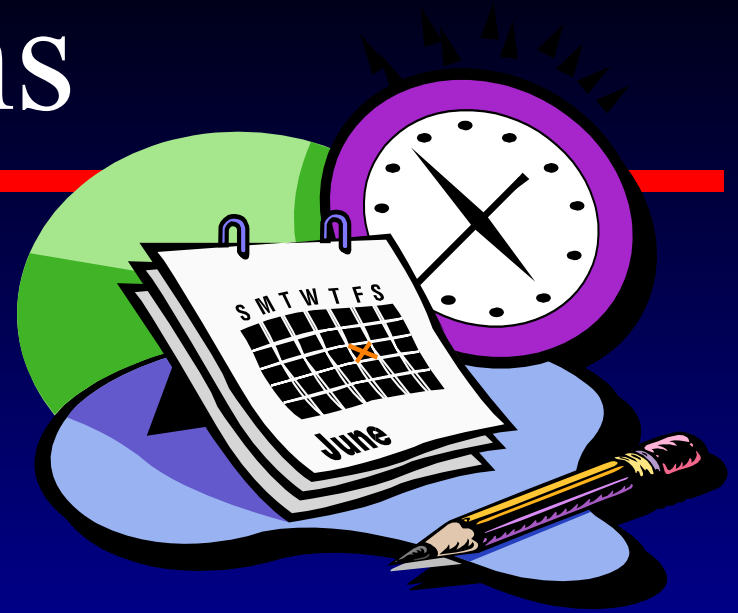
Proposed Regulations

- ▶ Federal Register Notice -
Vol 68, No. 61, pp. 15559-
15597
- ▶ Online via GPO Access -
WAIS.ACCESS.GPO.GOV
(Docid:fr31mr03-43)

Proposed Regulations - Status

- ▶ 11/21/03 - Senate objections **dropped**.
- ▶ 12/22/03 - New Regs listed as being in **final** stage.
- ▶ March 2004 - Target month for **final** rule.

Final Regulations



- ▶ Published April 23, 2004
- ▶ **Effective** August 23, 2004

OVERVIEW

- ▶ Final rule documenting changes issued 4/23/04.
- ▶ Final rules scaled back from initial proposals.
- ▶ Overtime for employees earning less than \$455 per week.

Final Regulations

- ▶ 1.3 million white collar workers
 - ▷ Currently exempt
 - ▷ Will **gain** overtime protection

Final Regulations

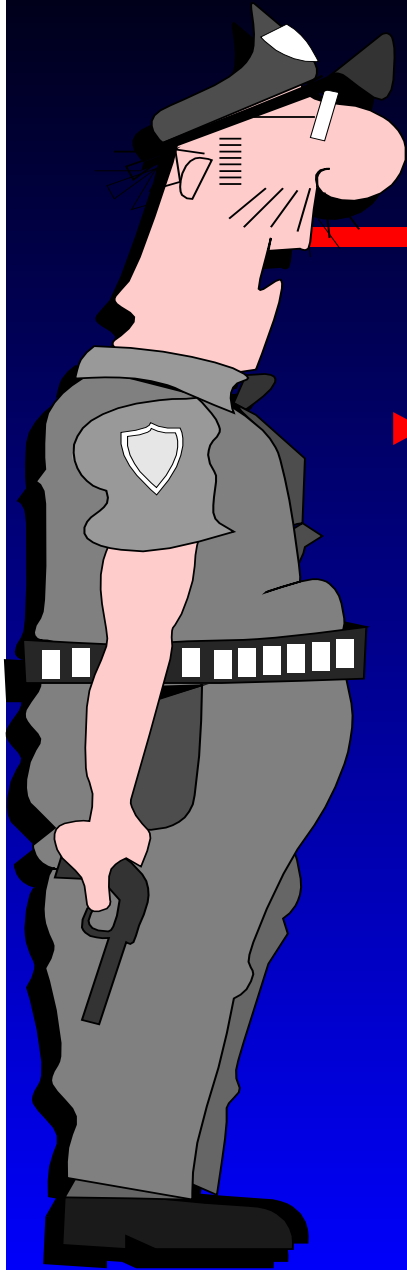
- ▶ Additional **costs**
 - ▷ \$375 million in annual payroll
 - ▷ \$739 million for implementation



Final Regulations

- ▶ Salary test
 - ▷ **\$455** per week
 - ▷ Does **not** apply if total annual compensation is \$100,000 or more

Final Regulations

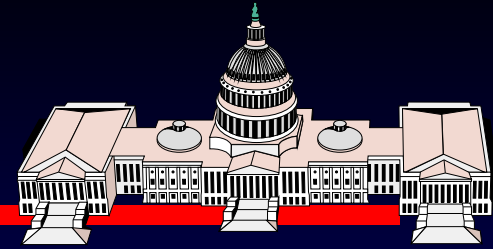


- ▶ Exemptions generally
 - ▷ Do not apply to **blue-collar** workers
 - ▷ Do not apply to **police** and **fire**

Occupations

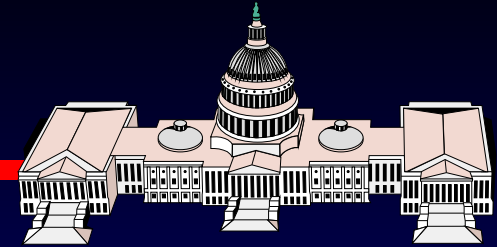
- ▶ Employees in certain occupations – public safety officials and licensed practical nurses **are** entitled to overtime.
- ▶ **Blue collar** workers entitled to overtime.
- ▶ Veterans' rights to overtime protected.

Legislation



- ▶ May 4, 2004 - **Senate** vote
- ▶ 52 to 47
- ▶ DOL **may not deny** overtime to any category of worker **now qualified** to receive O.T.

Legislation



- ▶ May 12, 2004 - **House** vote
- ▶ 222 to 205
- ▶ **Tabled motion** to include limitation on DOL O.T. rule in fiscal 2004 spending bill

Federal Court Cases

O'Brien v. Encotech (2002)

- ▶ Agreements signed by construction workers **releasing employer** from liability under the FLSA and state wage laws **violated public policy**.
- ▶ Construction workers **may not waive** rights under FLSA and release employer from liability.

Internet Links

- ▶ U.S. Dept of Labor **Website** www.dol.gov
- ▶ For FLSA information - click on Wages under Topics.
- ▶ FLSA- Law and Regulations - click on wages and work hours
- ▶ Wage and Hour Opinions - click on wages, and wage and hour division.
- ▶ Code of Federal Regulations - www.access.gpo.gov/nara/cfr

Internet Links

- ▶ U.S. Dept of Labor **Website** www.dol.gov
- ▶ For FLSA information - click on Wages under Topics.
- ▶ FLSA- Law and Regulations -click on wages and work hours
- ▶ Wage and Hour Opinions - click on wages, and wage and hour division.
- ▶ Code of Federal Regulations - www.access.gpo.gov/nara/cfr

IMPACT OF THE NEW FLSA REGULATIONS

William A. Harding, Esq.
Harding, Shultz & Downs
Lincoln, Nebraska

402/434-3000

402/434-3030-Fax

E-Mail: wharding@hsdlegal.com

Website: www.hsdlegal.com