

FLSA - THE COMPUTER EXEMPTION

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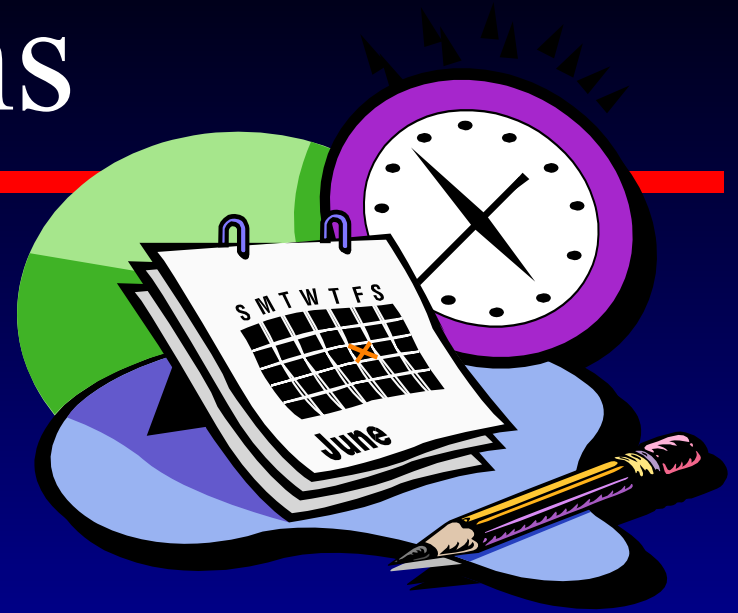
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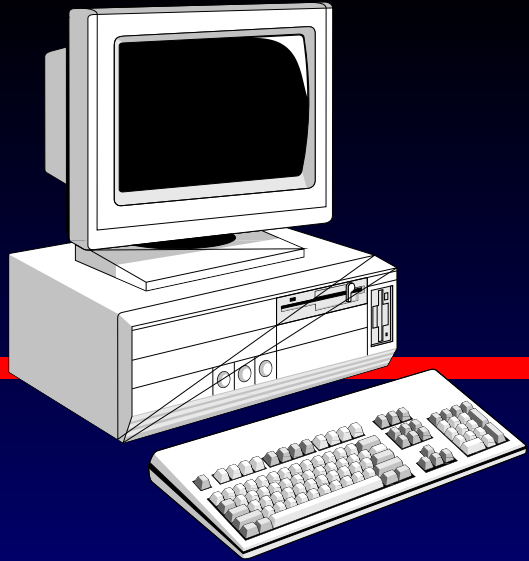
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Final Regulations



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



Computer Employee Exemption

- ▶ Paid **either** on a salary or fee basis of at least **\$455** per week, **or** if paid on an hourly basis, at least **\$27.63** per hour.

Computer Employee Exemption

- ▶ The employee must be employed as a computer systems **analyst**, computer **programmer**, software **engineer** or other similarly skilled worker in the computer field.

Primary Duties

- ▶ Application of systems **analysis** techniques and procedures;
- ▶ Design, **development**, documentation, analysis, **creation**, testing or modification of computer systems or programs related to user or system design specifications;

Primary Duties

- ▶ **Design**, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- ▶ **Combination** of aforementioned duties, requiring the same level of skills.

Computer Employee Exemption

DOES *NOT* INCLUDE

- ▶ Employees engaged in the **manufacture** or repair of computer hardware or related equipment.
- ▶ Employees whose work is highly **dependent** upon or facilitated by the use of computers and computer software programs are not exempt under computer exemption.

Fact Sheet

- ▶ Department of Labor's
Fact sheet –
- ▶ [http://www.dol.gov/esa/regs/
compliance/whd/fairpay](http://www.dol.gov/esa/regs/compliance/whd/fairpay)

Commentary

- ▶ AFL-CIO argued that the new final regs **remove** existing overtime protection from computer employees.

Commentary

- ▶ Dept of Labor asserts that there has been **no** change to current law regarding computer employees.
- ▶ The rules adopt provisions on computer employees passed by Congress in 1990 and 1996 and **mirror** existing federal case law.

Burke v. Monroe County (2002)

- ▶ Computer network administrators can **proceed** with overtime pay case.
- ▶ Employer's motion for summary judgment **denied**.
- ▶ Most of the work involved was **“routine”** without exercise of discretion and **independent** judgment.

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