

THE NEW EXECUTIVE EXEMPTION

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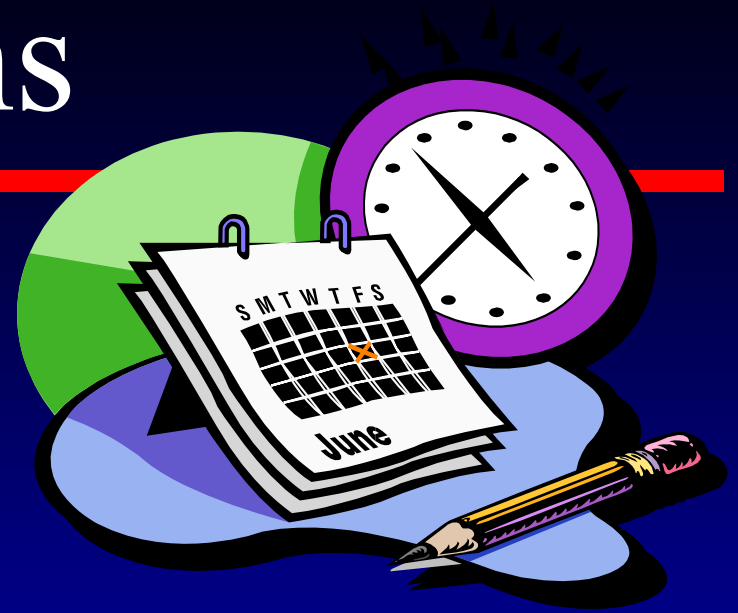
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Final Regulations



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

Exempt Employees

WHITE COLLAR EXEMPTION

- ▶ **EXECUTIVE**
- ▶ **ADMINISTRATIVE**
- ▶ **PROFESSIONAL**
- ▶ **OUTSIDE SALES**



White-Collar Exemption - The Duties Test (former)

Executive Employees

- ▶ Paid at least **\$155** per week
- ▶ **Primary duty** is management
- ▶ **Supervises** 2 or more employees
- ▶ **Discretionary** powers
- ▶ Less than **20%** of weekly hours spent in non-exempt work

White-Collar Exemption - The Duties Test (New)

Executive Employees

- ▶ Paid at least **\$455** per week
- ▶ **Primary duty** is management
- ▶ **Supervises** 2 or more employees
- ▶ Has **authority** to hire/fire or effectively recommend the same

Primary Duty

- ▶ Employees who spend more than **50%** of their time performing exempt work will generally satisfy the primary duty requirement.
- ▶ However, the regulations **do not require** that exempt employees spend more than 50% of time performing exempt work.

Two or More

- ▶ Phrase **“two or more other employees”** means **2 full-time employees** or the equivalent.
- ▶ Full-time means **40 hours/week**.
- ▶ Supervision of same employees can be distributed among 2 or more exempt executives, but the hours worked by an employee cannot be credited more than once.

Concurrent Duties

- ▶ Concurrent performance of exempt and non-exempt work **does not automatically disqualify** an employee from exemption.
- ▶ Exempt executives generally decide when to perform non-exempt duties and remain responsible for the success or failure of business operations.

Concurrent Duties

- ▶ **Non-exempt employees** generally are **directed** by a supervisor to perform the exempt work or perform the exempt work for defined time periods.



20% Owner Executives

- ▶ The executive exemption also includes employees who:
 - ▷ Own at least a bona fide **20% equity interest** in the enterprise; and
 - ▷ Are actively **engaged in management.**
- ▶ The salary level and salary basis requirements **do not** apply to 20% equity owners.

Review

- ▶ Duties requirements for executive exemption:
 - ▷ Primary duty of management;
 - ▷ Customarily and regularly directs work of 2 or more other employees; and
 - ▷ Authority to hire or fire, or having suggestions and recommendations to do same.
- ▶ Also applies to 20% owners actively engaged in management.

Interpretative Comments

- ▶ Comments received concerning addition of definition of phrase **“authority to hire or fire”**
- ▶ DOL said no definition needed.

Interpretative Comments

- ▶ Public sector commenters worried that hiring and firing authority would result in loss of exempt status.
- ▶ **Definition added to preserve public sector executive employee exemption.**

Interpretative Comments

- ▶ Supervision of 2 or more equivalent employees retained.
- ▶ DOL concluded that raising the number could **harm** small businesses that do not have a large number of employees.

Fact Sheet

- ▶ Department of Labor's Fact sheet –
 - ▶ <http://www.dol.gov/esa/regs/compliance/whd/fairpay>

AFL-CIO Comments

- ▶ New regs will strip overtime rights from working supervisors, including **assistant retail managers.**

Labor Dept Response to AFL-CIO Comments

- ▶ Final rule makes it harder to deny supervisors overtime.
- ▶ Overtime pay of relief and working supervisors protected by new regulations.

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