
FAIR LABOR STANDARDS ACT

FINAL RULES PUBLISHED

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On July 6, 2015, the Department of Labor (DOL) published in the Federal Register proposed rules revising certain provisions of the Fair Labor Standards Act (FLSA). The primary change to the regulations was an increase in the weekly salary requirement for employees paid on a salaried basis to qualify under the professional, administrative, executive, or computer employee exemptions. Employees who qualify for these exemptions are paid a set weekly salary and are not eligible for overtime pay, regardless of the number of hours worked.

The final regulations were published in the Federal Register on May 23, 2016, and take effect Dec. 1, 2016. Previously, in order to qualify for one of the exemptions listed above, an employee needed to have job duties that met the requirements for the particular exemption under which the employee fell. The “duties” tests for each of the exemptions have not been modified in the final rule. For the time being, the duties tests remain the same. The primary change is the increase in weekly salary.

Since 2004, in addition to having the employee’s job duties fall under one of the exemptions, the exempt employee’s weekly salary rate needed to be a minimum of \$455.00 per week (\$23,660 annually). The final regulations change this weekly salary amount to \$913.00 per week (\$47,476 annually). This number represents the salary level at the 40th percentile of earnings for full-time salaried workers in the lowest-wage Census region, and is less than originally anticipated in the proposed regulations. The final rules also provide an automatic increase to update the required annual salary requirements for these exemptions every three (3) years, with the first increase to be effective Jan. 1, 2020.

The final rule also allows employers to use non-discretionary

bonuses and incentive payments, such as non-discretionary bonuses tied to productivity and profitability, to satisfy up to 10 percent of the salary requirement. However, it is critical to note that, to be counted toward the required salary amount, these payments must be made on a quarterly or more frequent basis, and the regulations permit the employer to make a “catch-up” payment. Even though some employers may make very substantial bonus payments, the maximum that can count toward the salary requirement is the 10 percent cap.

Finally, the “highly compensated employee” (HCE) salary requirement has been increased from an annual salary of \$100,000 to \$134,004. A HCE is an employee whose primary duty includes performing office or non-manual work and who customarily and regularly performs at least one of the exempt duties of an exempt executive, administrative, or professional employee.

While the annual salary requirement for computer employees paid on a salaried basis has increased to \$913.00 per week, the overtime pay exemption for computer employees paid on an hourly basis of at least \$27.63, has not changed. Employees falling under the computer employee exemption, who are paid at least this hourly rate, may continue to be paid in this manner with no overtime pay requirement.

The U.S. Department of Labor’s website contains a fact sheet that is specific to state and local governments that may provide additional useful information for governmental entities and issues specific to them, such as the continued availability of compensatory time in lieu of overtime for non-exempt employees. The fact sheet also discusses options for complying with the new regulations.

With these new regulations finalized, it is important for Missouri public employers to prepare for

the consequences of the increased minimum salary provisions so as to avoid penalties. Municipalities need to conduct an audit review of their currently exempt positions and employees to determine if the new salary requirements change the employees from exempt to a non-exempt status subject to the payment of overtime. Such review may also require changes in the public employer’s time keeping activities to insure that employees who are no longer exempt from overtime receive the proper overtime pay or compensatory time. Budgetary considerations may also need to be made to accommodate the upcoming changes. There is time to adjust to the changes before they are effective, but delay will only expose employers to potential significant liability. These regulations do not change the exemption from the FLSA for police departments that employ less than five (5) sworn employees.

Failure to comply with the new regulations can result in penalties of double the value of unpaid overtime and also collection of attorney fees for prevailing employees. You may expect the Wage & Hour Administration to be vigilant in its oversight of the new overtime regulations.

The Missouri Municipal League will be providing programs on the Fair Labor Standards Act. Be sure to watch for the scheduling and locations of the programs. □

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