

KenMor



Fall 2016

YOUR GULF COAST ELECTRICAL CONNECTION

Service Department Strands Strong

PG 6

Advancing Building Safety with Lightning Protection Systems

PG 10

A Brave New World of Overtime Compliance

by Marcus Fettingler, Gray Reed & McGraw, P.C.

Businesses have struggled with complying with overtime laws since the Fair Labor Standards Act (“FLSA”) went into effect in 1938. Plaintiffs’ lawyers have capitalized on this confusion in recent years, filing numerous lawsuits throughout the United States. The new FLSA regulations promulgated by the U.S. Department of Labor (“DOL”) will certainly pose a new problem for all businesses. This article is designed to help business owners avoid lawsuits and DOL investigations and audits.



On March 13, 2014, President Barack Obama issued a Presidential Memorandum directing the Secretary of Labor to “modernize and streamline the existing overtime regulations.” In response to this directive from the President, the DOL announced changes to the overtime exemptions that are designed to narrow the scope of the exemptions and, as a result, decrease the number of exempt em-

ployees. The new overtime regulations go into effect December 1, 2016.

So what does all of this mean for you and your business? Simply put, you need to understand the following rules and apply them to your workforce.

FLSA Basics

- Employers must pay employees at least the federal minimum wage (\$7.25/hour) and overtime at a rate of

1.5 times an employee’s regular rate of pay for all hours worked over 40 in a week, unless an employee is exempt.

- Key exemptions are: executive, administrative, professional, computer employee, outside sales, and highly compensated employee.
- These are commonly referred to as the “white collar” exemptions.
- Each “white collar” exemption has a (i) salary or minimum pay requirement (except for outside sales), and (ii) duties test.

White Collar Exemption Duties

While it was contemplated that the duties test for the various overtime exemptions may be changed as a part of this sweeping reform, the required duties for each exemption remain unchanged. Here are the required duties for the most common white collar exemptions:

- Executive Exemption:
 - Primary duty must be management of either the entire organization or a department.
 - Supervise two or more full-time employees or equivalents.
 - Hiring and firing authority or recommendations are considered.
- Administrative Exemption:
 - Office or non-manual work (examples: accounting, purchasing, marketing, safety and health, HR, employee benefits, public relations, computer network, and legal and regulatory compliance).
 - Primary duty must be office or non-manual work directly related to management or general business operations of employer or employer's customers.
 - Primary duty must include exercise of discretion and independent judgment with respect to matters of significance.
- Professional Exemption:
 - Primary duty must be work requiring advanced knowledge – predominantly intellectual in character, includes work requiring consistent exercise of discretion and judgment.
 - Advanced knowledge must be in a field of science or learning.
 - Advanced knowledge must customarily be acquired by a prolonged course of specialized intellectual instruction.
 - Creative professional exemption: invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Minimum Salary Increase

Prior to the 2016 revisions to the FLSA regulations, the white collar exemptions required a minimum salary of \$455 per week. That number has now more than doubled to \$913 per week or \$47,476 annually. Experts believe that this will result in more than 4 million currently exempt workers becoming nonexempt from the overtime provisions of the FLSA on December 1, 2016. Additionally, the DOL will reassess the salary minimum every three years and automatically update the salary minimum to a level that is equal to the 40th percentile of full-time salaried workers in the lowest-wage U.S. Census Region.

Highly Compensated Employees Are Now the Top 10 Percent

Previously, the FLSA considered individuals earning more than \$100,000 per year to be exempt from overtime so long as they perform non-manual labor and one of the exempt duties of the executive, administrative, or profes-

sional exemptions. The regulations set the threshold at the top 10 percent of full-time salaried workers in America. Under that formula, the new threshold will be \$134,004.

Post Your Posters!

The DOL has issued a new regulation requiring employers to post a revised FLSA poster. The updated regulations require the posting of the “Employee Rights under the Fair Labor Standards Act” poster. The regulation took effect August 1, 2016, so you should already have this poster hanging in your workplace. The new FLSA poster added information on the misclassification of employees as independent contractors and an entire section on nursing mothers’ right to express breast milk in a private space in the workplace for one year after the child’s birth. The new FLSA poster is available at <https://www.dol.gov/whd/regs/compliance/posters/flsa.htm>.

For further information on the new overtime regulations, please visit <https://www.dol.gov/whd/overtime/final2016/>.

