



New Overtime Rules

- Effective August 23, 2004
- First update to the duties test since 1949
- First update to the salary level since 1975

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New Overtime Rules

- Update the Three Exemption Tests
 1. Salary Level Test
 2. Salary Basis Test
 3. Duties Test

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(1) Salary Level Test

- Current Salary Test is \$255/week
- New Salary Test is \$455/week or \$23,600 per year

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(2) Salary Basis Test

- In General
 - Employee must be paid each pay period a salary which is not subject to reduction because of variations in the quality or quantity of the work performed

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(2) Salary Basis Test

- Current prohibited deductions
 - Absences occasioned by the business
 - Absences due to jury duty, witness service or temporary military leave
 - Cash shortages or casualty losses
 - Discipline

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(2) Salary Basis Test

- New prohibited deductions
 - Absences occasioned by the business
 - Absences due to jury duty, witness service or temporary military leave
 - Cash shortages or casualty losses

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(2) Salary Basis Test

- Salary Basis Test – Current permitted deductions
 - No work performed in entire week
 - Violation of major safety rule
 - Full day absence for personal reasons
 - Full day sick or disability absences

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(2) Salary Basis Test

- Salary Basis Test – New permitted deductions
 - No work performed in entire week
 - Violation of major safety rule
 - Full day absence for personal reasons
 - Full day sick or disability absences
 - Discipline for workplace conduct rules published in a written policy uniformly applied to all
 - FMLA absences of partial or full day(s)

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(2) Salary Basis Test

- New Safe Harbor applies where
 - Policy prohibits improper deductions and include complaint mechanism; and
 - Employees reimbursed; and
 - Commitment to comply in future is made

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(3) Duties Test

- New "Blue Collar" provisions
 - Manual laborers who perform non-management work involving repetitive operations with their hands, physical skill and energy
 - Are never exempt

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(3) Duties Test - Executives

- Current Exemption
 - Primary duty is to manage an enterprise or department or subdivision thereof
 - Customarily and regularly direct work of two or more employees.

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(3) Duties Test - Executive

- New Exemption
 - Primary duty is to manage an enterprise or department or subdivision thereof
 - Customarily and regularly direct work of two or more employees
 - Has authority to hire or fire or have particular weight given to suggestions and recommendations of changes in status

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(3) Duties Test - Executive

- Current Exemption - - Sole Charge rule
 - Where one sole person in charge of an off-site facility or department even though does not meet all duties requirements



(3) Duties Test - Executive

- New Exemption - - Sole Charge rule eliminated and overtime must be paid



(3) Duties Test - Executive

- Current Exemption - - Business Owner Rule
 - Must meet all of the duties requirements



(3) Duties Test - Executive

- New Exemption - - Business Owner Rule
 - Owner of at least a bona fide 20% equity interest of business
 - Actively engaged in management of the business
 - No salary test



(3) Duties Test - Administrative

- Current Exemption
 - Primarily perform office or non-manual work that is directly related to management policies or general business operations
 - Customarily and regularly exercise discretion and independent judgment



(3) Duties Test - Administrative

- New Administrative Exemption
 - Primarily perform office or non-manual work that is directly related to management policies or general business operations
 - Customarily and regularly exercise discretion and independent judgment
 - Illustrations of various jobs/duties



(3) Duties Test – Professional

- Current Exemption
 - Work requires scientific or specialized study or
 - Original and creative work in a recognized artistic endeavor
 - Discretion and judgment with respect to scientific, specialized or academic work - - not needed with respect to artistic endeavors



(3) Duties Test – Professional

- New Exemption
 - Work requires scientific or specialized study obtained from school-type instruction or
 - Original and creative work in a recognized artistic endeavor
 - Discretion and judgment with respect to scientific, specialized or academic work - - not needed with respect to artistic endeavors



(3) Duties Test – Highly Compensated Employees

- New Exemption Created
 - Annual compensation of \$100,00/year
 - Must customarily and regularly perform one or more exempt duties that are non-manual or office in nature



Prepare for New Rules

1. Review each exempt employee's salary to ensure the \$455/week or \$23,600/year minimum is met



Prepare for New Rules

2. For each exempt employee whose salary meets the salary test, review duties and compare with new regulations
 - Remember new rules on highly compensated employees, blue collar workers and sole charge exclusion



Prepare for New Rules

3. Review written employment policies to ensure that
 - workplace conduct and safety rules are uniformly applied to all employees;
 - discretion retained to impose unpaid suspensions; and
 - prohibited deductions are omitted



Prepare for New Rules

4. Take advantage of Safe Harbor rules
 - Create new policy barring improper deductions and including complaint mechanism and commitment to comply with new laws;
 - Pay back pay where appropriate - - weigh and balance obligations vs. course of conduct

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