



April 20, 2004

Keller and Heckman LLP
Serving Business through Law and Science®

DEPARTMENT OF LABOR ISSUES NEW OVERTIME RULE

Manesh K. Rath
Elliot Belilos
Jeremy W. Brewer

The Department of Labor released the new final regulations this afternoon governing employee overtime eligibility under the Fair Labor Standards Act (FLSA).

These rules will take effect 120 days from the date that they are published, which we anticipate will be sometime this week.

Some Significant Changes

Under the new rules, workers earning less than \$23,660/year (or less than \$455/week) are guaranteed overtime rates for all hours worked over 40 hours in a workweek. Under the old version of the rules, only employees earning less than \$8,060/year were guaranteed overtime.

The regulations also contain new provisions that guarantee overtime pay to "blue collar" workers, police officers, firefighters, paramedics, EMT's, and licensed practical nurses. This is a significant change from the old rule.

The new rule defines the "highly compensated test," which exempts workers that are compensated more than \$100,000 per year; receive at least \$455 per week; perform office or non-manual work; and customarily perform exempt duties under the executive, administrative or professional exemptions.

The new regulations under the FLSA still provide exemptions from

overtime pay for bona fide executive, administrative, professional, outside sales, and some computer employees.

To qualify for the exemption under the new rules, employees must meet certain tests regarding job duties *and* be paid on a salary basis at not less than \$455/week.

For example, to qualify for the administrative exemption, the following tests must be met:

- 1) The employee must be compensated on a "salary" or fee basis at not less than \$455/week;
- 2) The employee's "primary duties" must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- 3) The employee's "primary duties" include the exercise of discretion and independent judgment with respect to matters of significance.

The definition for "Primary Duty" has changed significantly; employees who spend more than 50% of their time performing exempt work will generally satisfy the primary duty test.

However, other factors may be considered in the event that an employee spends less than 50% of his time performing exempt work. meet the definition of having an exempt primary duty.

What Employers Should Do

These new standards will impact on the employers everywhere, as they will affect the amounts and methods by which employees are paid.

In light of these significant regulatory changes, employers should train their payroll and human resources professionals and should coordinate with their employment counsel to make changes to their payroll processes and exempt classification before the effective compliance date. ♦

KELLER AND HECKMAN LLP

Visit our website at
www.khlaw.com

To find out how Keller and Heckman can help your business in its human resources needs, call Mr. Rath at (202) 434 4182 or e-mail him at rath@khlaw.com.

K&H Employment Law Alert is distributed free of charge and distributed by the law offices of Keller and Heckman LLP, 1001 G Street, N.W., Suite 500W, Washington, D.C. 20001. Copyright 2002. All rights reserved. All articles are on topics of general interest and do not constitute legal advice for particular facts. For other requests please contact Manesh K. Rath at (202) 434-4182 or by e-mail at rath@khlaw.com. Keller and Heckman LLP provides the Employment Law Alert as an information tool to businesses. If you prefer not to receive this Alert, please email us at rath@khlaw.com. Please allow 5 business days for your request to be processed.