

New overtime regulations effective Aug. 23



White collar workers will feel most impact

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Hardly a week goes by recently but what one of the stories of prominence is relating to new overtime regulations issued this spring by the U.S. Department of Labor. Those regulations become effective Aug. 23.

The federal government has posted a web page at <http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm> to assist employers in fighting through these new rules. Primarily they will apply to what are traditionally known as "white collar" workers, which often includes newspaper reporters and editors.

All workers must be paid at least the minimum wage pursuant to federal law, and overtime must be computed at the rate of 1-1/2 times the regular rate of pay for all hours worked over 40 hours per work week.

The new rules set out certain categories of workers who are exempt and who will therefore be exempt from this overtime requirement. Many of these exemptions are job-based. For example, an employee is exempt from this overtime requirement if he or she is a bona fide executive, administrative, professional or outside sales employee, or, in some circumstances, a computer employee.

There are tests that apply to these particular job duties, and the employees must be paid on a salary basis of not less than \$455 per week. The exemption for executive employees requires, in summary, that the employee be paid on a salary basis (as defined in the regulations) at a rate not less than \$455 per week; that his or her primary duty must be managing the business or a recognized subunit of the business; that he or she must customarily and regularly direct the work of at least two or more other full-time employees; and that he or she must have the authority to hire or fire other employees or be in a position to assist in making that decision.

The exemption for administrative employees requires, in summary, that the employee must be paid on a salary basis of not less than \$455 per week; must have responsibility for non-manual office work relating to management or general business operations; and he or she must use discretion and independent judgment regarding significant matters.

Two kinds of "professionals" are recognized: the "learned" professional and the "creative" professional. The "learned professional" again must be paid at least \$455/week; must have a job requiring advanced knowledge (inferring advanced knowledge in a science or learning field which generally requires a prolonged study to acquire) and must exercise discretion and judgment in performing that job.

Of special interest to those in the news industry is the exemption for the "creative professional." The "creative professional" must again meet the \$455/week salary requirement, and must have duties that require "invention, imagination, originality or talent in a recognized field of artistic or creative endeavor."

It would appear that this exemption could cover journalists if their work is to create stories, but not if their work primarily is to collect public facts or rewrite press releases.

The computer expert must either be paid a salary or fee at the rate of not less than \$455/week (or if paid on an hourly rate, at a rate not less than \$27.63/hour); he or she must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field primarily performing certain specified duties as set out by the regulations.

The exemption for the outside sales person requires that his or her primary duty must be making sales and he or she must work primarily away from the employer's place of business. Other exemptions apply for highly compensated employees. Traditional "blue collar" workers are specifically not exempt from the overtime pay

requirements. Many emergency workers are not exempt (such as police and fire).

As usual, it may be difficult to sort out some of these exemptions until the federal government has time to implement these rules and make some preliminary determinations, either internally or in the courts. Certainly, if an employer has questions about any particular employee situation, the company should consult with legal counsel about these issues. Employees of newspapers with 4,000 or fewer circulation may be exempt from these regulations.

More information on this exemption will be provided soon by the MPA office.

Small papers may be exempt from rules