<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
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<tr>
<td>BUSINESS OR HOBBY - WHICH DO YOU HAVE? A LOOK AT IRC §183</td>
<td>Edward Hobbs</td>
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<tr>
<td>RESOLUTION OF INTERNET DISPUTES: THE SEVENTH AMENDMENT'S</td>
<td>William T. (Will) Mawer</td>
</tr>
<tr>
<td>RIGHT TO CIVIL JURY TRIAL IN A BORDERLESS MARKETPLACE</td>
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<tr>
<td>(p. 1-12)</td>
<td>Jodi Soyars Windham</td>
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<tr>
<td>PLAYING DOCTOR - NOT A GAME EMPLOYEES WANT TO PLAY</td>
<td>Misti Hill Carter</td>
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<tr>
<td>(p. 28-34)</td>
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<tr>
<td>ECONOMIC DEVELOPMENT CONDEMNATION FOR THE BENEFIT OF</td>
<td>Donald E. Sanders</td>
</tr>
<tr>
<td>PRIVATE ENTERPRISE - KELO V. CITY OF NEW LONDON</td>
<td>Patricia Pattison</td>
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<tr>
<td>(p. 35-54)</td>
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<td>THE HIPAA PRIVACY RULE, 2005: THE FIRST YEAR OF FULL</td>
<td>Lee Usnick</td>
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<td>Kurt Stanberry</td>
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<td>(p. 55-65)</td>
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<td>Joe W. Fowler</td>
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<td>ANTI-DISCRIMINATION LAWS</td>
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<td>(p. 66-74)</td>
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<td>INDEPENDENT CONTRACTOR STATUS: CONTROL VERSUS</td>
<td>Frank J. Cavaliere</td>
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<td>ECONOMIC REALITIES</td>
<td>Toni Mulvaney</td>
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<td>(p. 82-92)</td>
<td>Marleen R. Swerdlow</td>
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<td>INTERNATIONAL PROPERTY RIGHT PROTECTION IN CHINA:</td>
<td>Russell Adams</td>
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<td>IS CURRENT ENFORCEMENT ADEQUATE?</td>
<td>Dr. Susan Jarvis</td>
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<td>Roger J. Johns</td>
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<td>NORFOLK SOUTHERN RAILWAY CO. V. KIRBY</td>
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<td>TO BE, OR NOT TO BE: THAT IS THE QUESTION: WHETHER 'TIS NOBLER</td>
<td>C. W. Van Bergen</td>
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<td>TO IMPLEMENT THE FAIRPAY OVERTIME INITIATIVE OR NOT?</td>
<td>William T. (Will) Mawer</td>
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<td>(p. 122-141)</td>
<td>Patricia W. Pool</td>
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<td>TRENDS IN EMPLOYER-PROVIDED BENEFITS:</td>
<td>M. Alix Valenti</td>
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<td>KELO AND LINGLE: THE SHIFTING LANDSCAPE</td>
<td>Brad Reed</td>
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<td>(p. 154-163)</td>
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<td>Edward B. Hymson</td>
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<td>WITH PROFIT MAXIMIZATIONS</td>
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<td>(p. 164-187)</td>
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<td>John Darcy</td>
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<tr>
<td>INFORMATION IS OUTSOURCED OFFSHORE?</td>
<td>Susan Jarvis</td>
</tr>
<tr>
<td>(p. 188-198)</td>
<td>Kent Fields</td>
</tr>
</tbody>
</table>
The changing demographics in the workforce have prompted a discussion of the need for changes in the federal regulations. The overtime pay rules which are contained in the FLSA have been under scrutiny due to concerns about their applicability and effectiveness.

2. BACKGROUND FOR CHANGE

This section presents a discussion of the rationale behind the new regulations, the current issues, and the necessary changes.

The proposed change is to modernize the overtime pay rules and clarify the criteria for these exemptions and to ensure that employers and employees are aware of the new regulations. The purpose of the new rule is to provide a more reasonable and flexible approach to the overtime pay rules.

The new regulations redefine the white-collar exemption to the FLSA and provide clearer guidelines for employers and employees. The new regulations are designed to eliminate ambiguity and uncertainty in their application. In response to this need for clarification, the Wage and Hour Division of the Department of Labor issued a new rule on April 24, 2004.

These regulations are intended to modernize the overtime pay rules and clarify the criteria for these exemptions and to ensure that employers and employees are aware of the new regulations.

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3. INTRODUCTION

The Fair Labor Standards Act (FLSA) requires that most employees be paid at a rate of not less than the minimum wage and overtime pay for hours worked over 40 hours in a workweek. However, there are also certain types of employees that are exempt from both minimum wage and overtime pay if they are considered exempt under the current salary levels.

Whether the current overtime pay rules are adequate is the question at hand.
...
misclassification of non-exempt employees. In many cases, the courts also applied
misclassification of non-classification of employees. In many cases, the courts also applied

Another dire consequence that contributed to the increase in lawsuits was the rise in
the PLEA.

In the meantime, other measures have been taken to reduce the
higher labor costs. One of these is the use of self-organized
behavior.

of classification of exempt employees to non-exempt status was a very attractive option for
The PLEA when, in fact, by law, the employees should have been classified as non-exempt. The
classification of exempt employees to non-exempt status was a very attractive option for
the employees, as they were not subjected to overtime pay and those exempt from overtime.

The increase in wages and hour lawsuits can be attributed to the demise of employees to cut

B. REASONS FOR INCREASED LIMITATION

and substantial fines

provisions, could also be charged criminally and could face imprisonment for up to six months.

observe wages, overtime, and federal laws. Employers with fair pay and

victims of non-classified employees. The Fair Labor Standards Act (FLSA)
could be assessed penalties of up to $10,000 for each violation. The

In addition to such large organizations above, owners of small businesses were likewise

performing non-exempt duties such as filling sales and maintaining their
C. ADDRESSING THE NEED FOR CHANGE

In partial response to the various problems being caused by the outdated regulations of the NCLB Act, the federal government is working to address the need for change. This involves revising the existing regulations to better align with modern educational needs and to provide a more comprehensive approach to education reform. The proposed revisions aim to focus on equity, access, and accountability, ensuring that all students have the opportunity to succeed.

The new regulations emphasize the importance of effective teaching and learning strategies, as well as the need for meaningful assessments that accurately reflect student progress. They also prioritize the development of strong partnerships between schools, communities, and families, recognizing that education is a shared responsibility.

In summary, the proposed changes reflect a commitment to improving educational outcomes and ensuring that every student has the opportunity to reach their full potential. The goal is to create a more equitable and effective educational system that prepares all students for success in the 21st century.
II. THE FAIRPAY OVERTIME INITIATIVE

Fall 2004/To Be Published

The introduction of the FPO was intended by the Bush Administration not only stem the
discipline, if the deductions are made under a policy of providing replacement to sick leave duties, absent from work for one or more full days due to sickness or disability, or absence from work for one or more full days due to personal reasons, other than:

However, if the deductions are made under a policy of providing replacement to the following:

3) Duties less rest.

<table>
<thead>
<tr>
<th>Required</th>
</tr>
</thead>
</table>
| Professional, Executive, Administrative, or any one of the exempt duties.
| New |
| $8,060/year, $155/week or ≥ |
| Prior FLSA |
| None |

<table>
<thead>
<tr>
<th>Exempt status defined by duties according to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee is paid a set salary</td>
</tr>
<tr>
<td>New</td>
</tr>
<tr>
<td>$223.66/week or ≥</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Table 1: Summary of the Three Tests to Qualify as Exempt Position and Comparison with Prior</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>FLSA Regs.</th>
<th>Description of Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change from</td>
<td></td>
</tr>
</tbody>
</table>

| 1) Salaries less nest |
| 2) Salary-level nest |
| 3) Duties less rest |
While time is not the sole determinative factor, an employee who spends more than 50 percent of his or her primary duty time performing a specific activity generally be said to have that activity as his or her primary duty. If the employee spends less than 50 percent of his or her time performing a specific activity, the time devoted to that activity need only be included if that activity is a major part of the employee's primary duty.

The rules of the Fair Labor Standards Act apply only to employees engaged in commercial activity. Performance on federal, state, and local regulations, and the highest degree of conscientiousness is expected of all employees.

3. TITLE I

C. Rules in Title I

1. Both Level Test

2. Salary Level Test

3. DNPL Test

The first and last required qualification is the highest job classification. The title level represents a major part of the employee's occupational training. The Fair Labor Standards Act minimum salary of $455 a week is required. This figure is the midpoint of the range for all employees. Some employees are considered most likely to be covered.

Additionally, the new proposed regulations require that the Fair Labor Standards Act take effect, including hours worked for that employee's pay, workweek, and total hours worked. These rules also require that employees be paid at least $455 a week, or $2,355 a year. This figure is based on the employee's pay rate or the employee's minimum salary to cover the Fair Labor Standards Act.

The second level is the salary level test. To be exempt from overtime, the new rules require that employees earn a minimum salary of $455 a week, or $2,355 a year, for each workweek. The third level is the salary level test. To be exempt from overtime, the new rules require that employees earn a minimum salary of $455 a week, or $2,355 a year, for each workweek.

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III. Exemptions from the FLSA

Learned and creative/supervisory (4) computer (3) outside sales personal

§251.1012 Exempt employees, the employer must identify whether an employee is exempt from overtime pay under the Act. This includes salespersons, outside salesperson and other employees who are not otherwise exempt from overtime pay under the Act. The employer must identify whether the employee’s duties are primarily similar to the duties of an exempt employee.

All employees are paid at a rate of one and one-half times the regular rate of pay for all hours worked in any workweek in excess of 40 hours, unless the duties reasonably included in the job classification.
A. **EXECUTIVE EMPLOYEES EXEMPTION**

To qualify for the executive employee exemption, each of the following four conditions must be met:

1. **Employees (Supplement C)**
   - Employee is paid at least $130,000 per year for primary duty exclusively of performing duties of an executive capacity.

2. **Highly Compensated (Supplement F)**
   - Employee is paid at least $145,000 per year for primary duty other than executive services.

3. **Outside Sales Employees (Supplement G)**
   - Employee's position is in an outside sales capacity, and the employee spends at least 50% of their time in activities directly related to the sale of products or services.

4. **Computer Employees (Supplement D)**
   - Employee is paid at least $100,000 per year for primary duty of performing duties that are predominantly of a technical or creative nature.

**Table 2: Overview of Exempt Employee Categories and Tests Required for Exemption**

<table>
<thead>
<tr>
<th>Category</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>1. Performance of executive functions</td>
</tr>
<tr>
<td>Management</td>
<td>1. Performance of management functions</td>
</tr>
<tr>
<td>Business Owner</td>
<td>1. Performance of management functions</td>
</tr>
<tr>
<td>Professional</td>
<td>1. Performance of professional functions</td>
</tr>
<tr>
<td>Administrative</td>
<td>1. Performance of administrative functions</td>
</tr>
<tr>
<td>Outside Sales</td>
<td>1. Performance of sales functions</td>
</tr>
<tr>
<td>Computer</td>
<td>1. Performance of computer functions</td>
</tr>
<tr>
<td>Employed Employee</td>
<td>1. Performance of none of the preceding functions</td>
</tr>
</tbody>
</table>

**Notes:**
- Employees (Supplement C) are excluded if they qualify under another category.
- Executive employees must be paid at least $130,000 per year for their primary duty.
planning and controlling the budget, and monitoring and implementing financial and other control measures (e.g., 37 USC 103).
B. ADMINISTRATIVE EMPLOYEES

This section provides a definition of "administrative employees" and explains the criteria used to determine eligibility for overtime pay under the Fair Labor Standards Act (FLSA). In general, an employee is considered an administrative employee if they primarily perform work that is closely related to

1. A review or evaluation of work performance or output that contributes to the control or coordination of the business operations of the employer; or

2. Certain professional, administrative, and technical staff positions that usually involve the exercise of discretion and independent judgment in the performance of their respective duties.

Administrative employees are generally characterized by the following traits:

- They perform work that is closely related to the management or general business operations of the employer.
- They exercise discretion and independent judgment in the performance of their duties.

The determination of whether an employee is an administrative employee is based on a review of the employee's primary duties. If more than 50% of their time is spent performing administrative work, they are considered administrative employees.
The new regulations provide a narrow interpretation for the specific classification of outside salesmen. To qualify as an outside sales employee and the examination, the employee must meet the following conditions:

1. **Outside Sales Employees' Exception:**
   - Employees who are employed under the Professional exception.
   - Have a written agreement in the Appendix providing a statement to determine the classification of the employee.
   - Not less than 75% of their work time spent outside the building.
   - Employed in the capacity of a representative or salesperson.
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2. **Outside Sales Employees' Exception:**
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C. **Professional Employees' Exception:**
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I. HIGHLY COMPENSATED AND OTHER EMPLOYEES: EXEMPTION

EXCEPTION AS SET FORTH IN THE APPENDIX.

This worksheet is visually displayed in the Appendix for the Computer Professional exception. The worksheet reflects the computer professional’s exception to the regulation of the Federal Trade Commission’s 1979 Final Rule on Computer Hardware and Software. This worksheet provides guidance on the determination of whether an employee is a computer professional.

A. COMPUTER PROFESSIONAL: EXEMPTION

The employee is provided in the Appendix.

Falsely certified, the worksheet in the determination of the exemption status of an employee must be made so as not to confuse or mislead. The worksheet must be reviewed and certified by the central office of the employer. The worksheet must be kept on file for at least one year from the date of determination.

E. COMPUTER PROFESSIONAL: EXEMPTION

The employee is provided in the Appendix.
"We believe that an update of the overall pay regulations contained in the FLSA is long overdue and that the DOL's pay overtime initiative is a reasonable solution to stimulating economic and overall pay increases.

VI. Concluding Comments"

"DOL 19CFR § 541.601"
PISA Examination Test Provider

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Job is exempt

Yes to all duties listed

Has the authority to hire or

and

any equivalent
of

directly supervise or a function or
customarily and regularly

Primary duty of managing the

Salary $455/week

Executive Exemption Flow Chart
Administered Exemption Flow Chart

- If either of the duties listed is
  - Not exempt
  - Yes to both duties listed

- Exercise discretion and
  - Significance
    - Respect for duties of
      - Independent judgment
      - Exercise discretion and
    - and
      - Employees customers
        - Employer of the
          - General business operation
          - Management policies or
            - office or nonmanual work
            - Primary duty of performing

- Not exempt
- Yes
- No

Salary $455/week

Fall 2005/To be or Not to Be: That is the Question.
Outside Sales Exemption Flow Chart

Job is nonexempt
above
No to either of the duties

Yes to the either of duties

The employee must be

business.
employees, place of places or
exempted away from the
customarily and regularly
primary duty of making sales

employees, or obtaining orders

payment by the client or customer
within a consideration will be
for the use of facilities for
or contracts for services or
property, or performing others
evidence of intangible
of intangible and valuable
property and in certain cases
transfer of title to tangible
disposition including the
shipment for sale or other
primary duty of making sales

No salary requirements

Fall 2002/2003 To Be Or Not To Be That Is The Question! To