

Today's UEDA, OEDA and
KIAWA webinar will
begin shortly. We are
waiting for attendees
to log on.

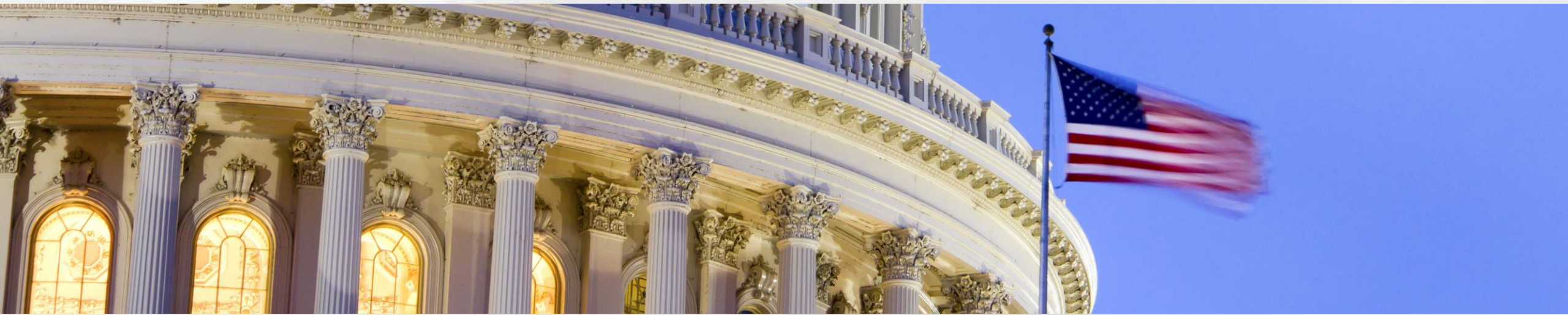
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The Fair Labor Standards Act: White Collar Exemption Changes And Challenges for UEDA, OEDA and KIAWA Members



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What's Going On?

- U.S. Labor Department published new definitions for certain White Collar (Part 541) exemptions under the federal Fair Labor Standards Act
- Last changed in 2004
- Revisions will affect most employers in at least some way
- Management should be thinking about:
 - What this means for the organization
 - What steps to take in response

What New Rules Do NOT Mean for Farm Equipment Dealers

Does not Affect the Farm Equipment Dealer Specific Exemptions:

- Salesperson exception
- Mechanics exemption
- Partsperson exemption

What New Rules Do NOT Mean for Farm Equipment Dealers

Salesperson, Mechanics and Partsperson still **ONLY**
need to be paid minimum wage

- Exempt from Overtime Regardless of amount and method of compensation

Four Main FLSA Requirements

1. A minimum wage (currently \$7.25 an hour; but note that Ohio has a higher minimum wage of \$8.10/hour).
2. Premium pay for overtime work (at a rate of 1.5 times the "regular rate" of pay for over 40 hours worked in a single workweek).
3. Certain recordkeeping, including accurate time records.
4. Limitations on the employment of minors under 18.

What Are "Exemptions"?

- "Exempt": Not Subject To One Or More FLSA Requirements
- Some apply only to the overtime requirements, some apply to the minimum-wage and overtime requirements
- Default rule: Everybody is non-exempt, unless an exemption clearly applies
- New rules affect most "white collar" exemptions from minimum-wage and overtime

"White Collar" Exemptions Affected

- Executive, Administrative, Professional
- Also "Computer Employees", "Highly Compensated" varieties
- Three general requirements for most of them:
 1. Paid on a "salary basis"
 2. Salary is at least a certain amount
 3. Employee performs specific kinds of work

Example: Executive Exemption

- Primary duty is managing the enterprise or a customarily-recognized department or unit
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire, or suggestions and recommendations about hiring, firing, advancement, promotion, other status changes are given particular weight
- Paid on a "salary basis" at a rate of at least \$455 a week (for now)

Executive

EXEMPT

- ✓ **Dealer**
- ✓ **Dep't Manager**

NOT EXEMPT

- ✓ **Ass't Manager**
- ✓ **CSI Manager**
- ✓ **Lot Manager**
- ✓ **Inventory Manager**
- ✓ **Finance Manager**

Example: Administrative Exemption

- Primary duty is office or non-manual work directly related to management or general business operations of the employer or the employer's customers
- This work includes the exercise of discretion and independent judgment as to matters of significance
- Paid on a "salary basis" at a rate of at least \$455 a week (for now)
- Possibly one of the most often erroneously-applied FLSA exemptions

Administrative

EXEMPT

- ✓ **Used Equipment Buyer**
- ✓ **Human Resources Manager**
- ✓ **Office Manager**

NOT EXEMPT

- ✓ **Office employees**
- ✓ **Warranty Admin.**
- ✓ **Accounts Payable**
- ✓ **Rental clerk**
- ✓ **Booker**

Other Examples

- Job titles do not determine exemption status, but some examples of employees who might meet the requirements for other "white collar" exemptions include:
 - "Learned" Professional: Doctor, Some Engineers, Teacher, Scientist
 - "Creative" Professional: Painter, Musician, Screenwriter
 - Computer Employee: Programmer, Software Engineer, Systems Analyst
 - Highly-Compensated: "Project Manager" who meets compensation test but meets only one of the duties required for the administrative exemption

What Is Changing?

- Effective December 1, 2016, minimum salary threshold will be \$913 per week (paid on a "salary basis")
- Requirement still applies each pay period (not annualized)
- Effective December 1, 2016, total-annual-compensation threshold for "highly compensated employee" exemption will increase to \$134,004
- Thresholds will be "updated" every three years, with 150 days' notice

Likely Exemption Changes

Jobs Most Likely to Benefit From New Overtime Rule

These occupational categories together represent more than half of the estimated 4.9 million salaried, white-collar workers who would become newly eligible for overtime

Occupational category	Estimated number of affected workers
First-line managers of retail sales workers	325,783
Accountants and auditors	304,880
Managers, all other	304,646
First-line managers of office/ admin. support workers	283,457
General and operations managers	223,018
Financial managers	193,742
Designers	114,587
Human resource workers	114,564
Human resources managers	106,628
Computer and information systems managers	101,199
Food service managers	99,143
Medical and health services managers	96,589
Social and community service managers	91,366
Counselors	87,459

Source: Pew Research Center analysis of Current Population Survey data via IPUMS

PEW RESEARCH CENTER

What Is Changing?

- Employers will be able to satisfy up to 10% of the salary threshold from "nondiscretionary bonuses and incentive payments"
- Includes commissions
- Can count only those paid quarterly or more frequently
- Cannot do this as to the salaries of employees treated as exempt under the "highly compensated" exception

Any Exceptions?

- No, for the most part
- Time-Limited Non-Enforcement Policy for "providers of Medicaid-funded services for individuals with intellectual or developmental disabilities in residential homes and facilities with 15 or fewer beds"
- USDOL won't enforce \$913 threshold
- Extends through March 17, 2019
- Separate USDOL materials on non-profits, governments, higher education provide no exceptions but expand upon USDOL's views

What Should You Do?

- Immediately evaluate exempt employees' current status, develop action plan
 - Continue to treat some or all as "white collar" exempt?
 - Treat as exempt on some other basis?
- Consider the FLSA alternatives (but don't forget the applicable laws of other jurisdictions)

Another Exemption?

- For example, is FLSA's Section 7(i) overtime exception an option?
 - Employee of a "retail or service establishment", and
 - More than half of employee's compensation in a "representative period" comes from "commissions", and
 - Regular hourly rate in an over-40-hours workweek is more than 1.5 times FLSA minimum wage
- Check applicable state and local laws

What If They're Non-Exempt?

- Different ways to pay non-exempt workers, such as:
 - Pay by-the-hour?
 - Pay a salary as straight-time compensation for 40 hours (or some other number)?
 - Pay a salary as straight-time compensation for all hours?
 - Pay on a commissions-plus-overtime basis?
 - Another approach (for example, a day-rate, job-rate, or piece-rate basis)?

Accurate Timekeeping

- If non-exempt, must keep accurate records of worktime:
 - Know everything that counts
 - Have a system and policies for capturing the time accurately
 - Train employees to follow
 - Train supervisors/managers to enforce
 - Periodically see whether the time records appear to be accurate

What Else Should You Do?

- Exemptions aside, are you sure you're 100% in compliance?
- Publicity will cause all employees (exempt or not) to focus upon their pay (the 2004 changes did)
- Find out now where you stand, especially if it's been a while since you looked
- Are you sure you are accurately recording worktime, properly computing overtime, making only lawful deductions, correct about all "contractors" . . . ?

Non-Compliance Consequences

- Back wages, plus equal amount ("liquidated damages")
- Civil money penalties up to \$1,100 per person
- 2-year limitations period, 3 years if "willful"
- Court-ordered compliance in the future (possible "contempt of court" for later violations)

Non-Compliance Consequences

- Pay plaintiff's "reasonable" attorney's fees, costs (and yours)
- Possible individual management liability
- Diversion, distraction, disruption
- Adverse publicity

Can We Dock Salary?

- “Salary basis of pay” means that an employee receives a fixed, predetermined amount, subject to very limited deductions, for any week in which any work is performed.
- “Docking” destroys the overtime exemption for executive, administrative, professional, and highly compensated employees.
- However, docking is permissible for all other categories of employees.

Salary Basis – Safe Harbor Provision

- Must clearly communicate policy prohibiting improper deductions, **and**
- Establish and communicate the complaint mechanism for improper deductions, **and**
- Reimburses employees for any improper deductions, **and**
- Make a good faith commitment to comply in the future

Some Practical Pointers

- Now is the time to correct any misclassification issues
- Clean up your record keeping – make sure you are accurately tracking all hours worked for non-exempt employees
- Be aware of Ohio and Federal law implications (e.g., minimum wage, employment of minors, deductions from pay)
- Job descriptions are not only factor, but certainly help – make sure they are accurate

Final Questions



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Thank You

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