



USDOL "Fact Sheets" Are Not The Law

Insights

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Some employers are apparently referring mainly (or even only) to U.S. Labor Department "Fact Sheets" in deciding what they should do to prepare for the coming changes in the federal Fair Labor Standards Act's so-called "white collar" exemptions.

While one might see these "Fact Sheets" as being useful summaries or overviews for these purposes, management must understand that these materials are not themselves the definitions of exempt status under the FLSA's Section 13(a)(1).

The *Regulations* Are The Rules

Instead, the specific requirements and detailed criteria for exempt status under that provision appear in force-of-law USDOL regulations found at 29 C.F.R. Part 541. An employer should not rely upon "Fact Sheets" as if they are reproductions or restatements of, or substitutes for, those regulations.

For instance, to the extent that a statement in a "Fact Sheet" is arguably more employer-favorable than the corresponding regulations, or if the document does not include or fully elaborate upon every exemption principle embodied in the regulatory definitions, the *regulations* will control.

On occasion, a USDOL representative might sometimes speak or act as if "Fact Sheets" have a status that they do not possess. But USDOL itself cautions in its "Fact Sheets" that they are "for general information and [are] not to be considered in the same light as official statements of position contained in the regulations." It means what it says.

The Bottom Line

The best way to evaluate which employees do and do not meet all of the requirements for exempt "white collar" status under the FLSA is to apply the actual regulatory definitions.

These provisions are typically vague, ambiguous, tedious, perplexing, and less-than-illuminating. No doubt this is why some employers gravitate to "Fact Sheets". Nonetheless, if and when there is a dispute about whether one or more employees should have been treated as exempt, the *regulations* will be applied – *not* "Fact Sheets".

USDOL has published many other "Fact Sheets" having to do with different FLSA exemptions or with matters relating to compensating non-exempt employees, restrictions on the employment of minors,

and so on. Management should also take care in deciding how much credence to give the contents of those documents.