



Quick Quiz Answer: Part-Time Exempt Status

Insights

11.13.15

The answer to our November 6, 2015 Quick Quiz is, "No". Under the new arrangement, Bigtown Computer Corporation could *not* continue to treat Tom as being exempt from the federal Fair Labor Standards Act's minimum-wage and overtime requirements.

In declining percentage order, the responses were:

"No":(58.7%)

"Yes":(24%)

"It is not possible to answer on the facts given":(12.7%)

"Only if Tom voluntarily agrees to the reduction":(4.6%)

The Current Minimum Is \$455 – *Period*

Bigtown proposes to reduce Tom's weekly-equivalent salary to a rate of $(\$850 \div 2) = \425 per week. But the minimum salary level for exempt status under the FLSA's Section 13(a)(1) executive, administrative, and professional exemptions (for employees who are subject to those exemptions' salary requirement) is a rate of \$455 per week, that is, \$30 a week higher than what Bigtown wants to pay.

The U.S. Wage and Hour Division's Office of Enforcement Policy has observed that the exemption regulations contain no exception permitting a lower salary than \$455 a week, even to take part-time status into account. Consequently, OEP has said, "the salary requirement of \$455 per week may not be prorated to reflect reduced hours, and the employee paid a salary of [less than that] does not qualify for the exemption" *Opinion Letter of Office of Enforcement Policy* FLSA2008-1NA (February 14, 2008). *See also Opinion Letter of Office of Enforcement Policy* FLSA2006-10NA (June 1, 2006).

Does Exempt Status Really Matter?

If Tom's part-time arrangement means that he will in fact be working significantly fewer than 40 hours every workweek, then Bigtown might consider whether there is any compelling reason to

treat Tom as exempt during this time in the first place. For example, if Tom worked exactly 25 hours in every workweek, then at the reduced salary his average hourly rate each workweek would be $(\$425 \div 25 \text{ hrs.}) = \17 per hour, more than twice the FLSA's current \$7.25-per-hour minimum-wage requirement.

Of course, if Tom worked more than 40 hours in any workweek, then Bigtown would have to pay him the FLSA-mandated overtime wages for the hours worked over 40.

Moreover, Bigtown could not simply *assume* that Tom worked exactly 25 hours (or any other particular number of hours) every workweek. Instead, it would have to (i) keep an accurate record of his hours worked each workday and each workweek, and (ii) ensure that Tom received the FLSA-required compensation based upon that record.

The Bottom Line

This no-proration principle will still apply whenever the U.S. Labor Department's proposed salary-level increase goes into effect. If the new minimum is ultimately, say, \$970 a week, then *that* will become the lowest salary Tom could be paid in order for Bigtown to continue to treat him as exempt (whether he was working either part-time or full-time).

It seems likely that, when faced with such a high figure, employers dealing with these situations will forgo exempt status and will substantially reduce the employee's pay to an amount commensurate with the part-time work to be done. Management might even decide to change the employee's compensation method, such as by paying him or her on an hourly basis.

Finally, in analyzing such circumstances, employers must also take into account the relevant requirements of applicable state or local wage-hour laws and regulations.