



The Seay Management Report



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Urgent -- Special Management Alert



"What is the Anthropic Principle," the man asked? Sinclair replied, "It's a principle of physics that says that things happened as they did because they could have happened no other way." "O," said the man, "so the bureaucracy, never having been in the business world and completely ignorant of it, imposes regulations on the business world, because that is what they do and they could have done it no other way?" "Yes," snorted Sinclair. "It is difficult to get a man to understand something when his salary depends upon his not understanding it."

-- An imaginary conversation between Upton Sinclair, the American novelist, and an unknown American entrepreneur, trying his best to make a payroll.

Obama Administration Raises Exempt Salary Levels

A little over a year ago, the Obama administration directed the Department of Labor to devise new regulations that raise the salary levels for white collar exempt employees. This is a huge change with seismic implications. Wage and Hour regulations identify five white collar exemptions and employees who meet these qualifications are exempt from time keeping, the minimum wage and overtime.

The five exemptions are:

Executive – Employees who perform management responsibilities that involve supervision of other employees.

Administrative – Employees who perform management responsibilities that may not involve supervision, but may involve the management of assets or a specific management function.

Professional – Employees who are generally regarded as professional in that they possess extended learning or a specialized degree, such as physicians, Registered Nurses and Certified General Engineers.

Outside Sales – Employees who are engaged in sales activity, outside of the workplace.

Technical – This applies to certain employees who have a degree in Information Technology or Management Information Services.

Each exemption has a variety of requirements but one of the main requirements is that the person must receive a *guaranteed weekly salary, not subject to deduction*. The current minimum salary for these exemptions is \$455 and has not changed in several years. The new proposed salary level is \$921 per week and is indexed to a mysterious Department of Labor formula that would increase the salary levels to about \$970 per week in 2016. Some states, like California and New York, already have higher state requirements.

When Does This Change Become Effective?

It is not effective immediately. The Department of Labor has published them for public comment and after receiving and analyzing all of the comments, the DOL will publish final regulations. This might be sometime toward the end of this year or perhaps early 2016. The increase may or may not be implemented in increments – we won't know that until the final regulations are published.

If you're having trouble sleeping and want to read the proposed changes in their entirety, all 295 pages, you can find it here -- <http://www.dol.gov/whd/overtime/NPRM2015/OT-NPRM.pdf>. The meat and potatoes are on pages 286 and following.

What Will Be The Effect Of This Change?

The administration has couched this change in demagogic language but the result is going to be that exempt management employees earning less than \$921 per week will become non-exempt and must begin to keep a time record and receive overtime for all hours worked in excess of 40 per week. At this point, it does not appear as if the other exempt tests are going to change but I would not rule it out.

What Should We Do Now?

This change is going to be effective sometime in the next several months so here are some things you can do to prepare.

1. Review the current salary levels of your exempt employees to determine if they are under or close to the \$921 per week salary level. On the effective enforcement date, you will need either to (a) pay them overtime, (b) hold them to under 40 hours per week or (c) raise their guaranteed salary.
2. Exempt employees paid by a salary plus commission pay plan, such as automobile dealers and pest management companies and others, must restructure their pay plans to guarantee that these employees receive at least \$921 per week.
3. This is a good time to review the status of your exempt employees to make sure they meet the current Department of Labor requirements, that you have written job descriptions supporting the exemption and that identify the position as exempt or non-exempt.
4. Be prepared to revise your exempt/non-exempt policy in your employee handbook, so that it meets the new requirements.

Please contact your Seay Management consultant if you have any questions about the exempt/non-exempt regulations, or if you have any other question about Human Resources Management. We appreciate having you as a valued friend of our firm.

Very best regards,

Sandy and the Seay Management Consultants Team

Remember, if you have an employment issue or challenge, and you need an answer right away, and you want the very best Human Resources Management advice available, you need to call . . . The Seay Team!