



HUMAN RESOURCES UPDATE

SEPTEMBER

VOL 4, ISSUE 3

NEW FLSA GUIDELINES

The recently published Federal Labor Standards Act (FLSA) guidelines are much anticipated after years of woefully out of date tests for exempt and non-exempt employees. These go into effect August 23, 2004.

The entire set of guidelines may be found at <http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm>; however, this brief summary should provide most employers with enough information to begin evaluating the new guidelines as they relate to their own staff.

Signaling the importance the Department of Labor (DOL) is putting on the new regulations, they have issued a statement that enforcement of the new regs will begin immediately. Enforcement from the DOL will come by way of a surprise audit.

Employers should begin evaluating areas such as their job descriptions and classifications; pay deduction policies; training management on the new rules; and establishing an internal complaint process for employees to use regarding the new regs.

SUMMARY OF THE GUIDELINES

- Traditional “blue collar” workers are still non-exempt, including maintenance, carpenter, electrician, and similar workers
 - “First responders” including fire, police, paramedic and similar employees are still non-exempt
 - Executive Test addition: DOL has added the requirement that an exempt executive must “have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change in status of other employees must be given particular weight.”
 - Administrative Test: Two independent tests must be applied: the type of work the employee performs (office, non-manual work directly related to the management or business operations of the employer or its customers) and whether the employee’s primary duty includes exercising discretion and independent judgment regarding matters of significance. Both must be answered in the affirmative.
 - Professional Test: Similar updating to the Administrative test, in that the employee’s primary duty must be the performance of work requiring advanced knowledge in a field of science or learning which is customarily acquired by a prolonged course of specialized intellectual instruction. The DOL is now recognizing that someone may obtain this advanced knowledge through years of work experience and not simply a degree.
- Salary test is now \$23,660 per year or \$455 per week
 - Exempt employees may now be suspended, without pay, a full day (instead of a full week) for violations of *written* workplace conduct rules
 - Employers who institute a clearly communicated policy prohibiting improper deductions, include a complaint mechanism, reimburse employees for improper deductions, and make a good-faith effort to comply with the regs in the future, will have that position protected as an exempt position. Unless, of course, there are continued willful violations.

FOR CLIENTS
IN THE D/FW
AREA, THE
HOPKINS
GROUP, LLC
WILL BE
FEATURED ON
SCOTT HARRIS’
RADIO
PROGRAM ON
AUGUST 22,
FROM 4-5PM
ON KSKY
660AM

WEBSITE OF THE
MONTH:

BENEFITS.COM

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HUMAN RESOURCES
BUSINESS SOLUTIONS

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- Creative and Computer Professionals: No material changes were made.
- Outside Sales Reps: the percentage of time limitations on non-outside sales work no longer render an employee non-exempt so long as his or her primary duty remains making outside sales.

These regulations can be confusing, but it is imperative that all employers conduct a proper review to ensure compliance. The fines from the DOL can be devastating. For instance, the City of Houston was just ordered to pay \$48 million in back wages and \$48 million in liquidated damages to paramedics who were improperly denied overtime wages.

EPILEPSY AND THE ADA

The EEOC, the government body charged with enforcing the Americans with Disabilities Act (ADA) has issued a fact sheet clarifying the workplace rights of people with epilepsy under ADA. You may recall that the ADA protects qualified individuals with disabilities from discrimination by private and state and local government employers with 15 or more employees.

The new fact sheet explains

- When epilepsy is a “disability” under

ADA;

- When employers may and may not ask applicants and employees about their epilepsy;
- Reasonable accommodations that some people with epilepsy may need to work, most of which involve no cost and
- How employers should deal with safety concerns.

The complete fact sheet may be viewed here <http://www.eeoc.gov/facts/epilepsy.html>.

SKILLS CRISIS WITH NO SOLUTION

A recently released report warned that without new attention to developing workforce skills, the United States could fall into a “low skills equilibrium” in which only poorly skilled workers are available and businesses expect—and get—the worst from the labor pool.

The report, *Learning Partnerships: Strengthening American Jobs in the Global Economy*, said the federal Workforce Improvement Act needs substantial changes and more funding. But it added that local partnerships—not federal government programs—are the key to improving the readiness of the workforce. These partnerships would bring employers, employees, unions, educators and local leaders together to promote employee learning.

The report was issued April 20 by the Task Force on Workforce Development and was sponsored by the Albert Shanker Institute and

the New Economy Information Service. Participants in the task force included the AFL-CIO, the Business Roundtable and Harvard University’s John F. Kennedy School of Government.

The yearlong study recognized the pressures—such as global competition, technological change, low literacy and the pending retirement of the baby boomers—on the ability of U.S.-based organizations to maintain a workforce that can handle big challenges today and in the future. It said the skills base of the workforce will continue to erode without a focused approach to training and retraining U.S. employees.

The report called for “a national campaign to improve the skills and professionalism of the workforce,” saying that “we must create new learning partnerships throughout our communities and workplaces” to keep jobs from heading overseas or simply disappearing.