

Thinking Over Overtime: How Changes to Overtime Regulations May Affect Medical Professionals

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The Department of Labor's ("DOL") recent changes to the Fair Labor Standards Act's ("FLSA") overtime regulations have somewhat altered the landscape when it comes to overtime pay. Unfortunately, the new regulations have done little to make the law any clearer. Healthcare employers should use the changes detailed below as an opportunity to examine and reevaluate their overtime policies and practices.

Although there are numerous changes, the most significant amendments to the FLSA concern the rules governing exempt employees. Exempt employees are excluded from minimum wage overtime regulations under the FLSA, and typically include executive, supervisory, professional and outside sales positions. Medical professionals will be principally impacted by the changes to the administrative and professional "white collar" exemptions under the FLSA.

The DOL has narrowed the increasingly popular administrative exemption. Although employees classified under this exemption must still primarily perform office or non-manual work "directly related to the management or general operations of the employer or the employer's customers," the second prong of the test has changed. Where previously it was only necessary for the employee to "[c]ustomarily and regularly exercise discretion and independent judgment," the new regulations have stiffened this prerequisite by requiring that the exercise of such discretion and judgment be "with respect to matters of significance," which specifically excludes clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work.

The amendments also divide the professional employee exemption into three categories: learned professionals, creative professionals, and teachers. "Learned professionals" must primarily perform office or non-manual work that requires "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction." To further clarify this category of learned professionals, the DOL has specifically listed several professions that are likely to be considered as exempt, including nurses, registered or certified medical technologists, dental hygienists, and physicians assistants (note, however, that any employee who is paid on an hourly basis must be paid overtime). The DOL expressly carves out licensed practical nurses as nonexempt employees under the new regulations.

In addition, the amended regulations have established new minimum and maximum compensation requirements. Any employee earning less than \$23,660 per year in total compensation (a steep rise from the previous requirement of \$8,060) is automatically nonexempt under the FLSA and *must* be paid overtime. On the high end, any employee earning more than \$100,000 per year is generally considered to be exempt as long as that employee performs office or non-manual work and has an identifiable executive, administrative, or professional function as described in the standard "white collar" duties tests.

Another significant change to the FLSA involves the addition of permissible payroll deductions for exempt employees. The new regulations allow employers to reduce the pay of

exempt employees for disciplinary violations. Specifically, deductions are now permissible “for penalties imposed in good faith for infractions of safety rules of major significance; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions.” The regulations indicate that disciplinary suspensions must relate to serious workplace misconduct such as sexual harassment, violence, drug or alcohol violations, or violations of state or federal laws, as opposed to simple performance or attendance infractions. This new rule allows deductions to be made on a daily basis, whereas before an employer could only dock employees’ pay in weekly intervals.

In general, the changes to the FLSA regulations are not a great departure from the original regulations. The DOL chose to fine-tune the system rather than overhaul it; however, it remains to be seen whether DOL and court enforcement will alter this dynamic. Until that time, employers should take the time to examine and reevaluate the job duties of their employees to insure that they are maintaining compliance with the amended regulations, to identify any possible exemption changes under the amended regulations, and to review their payroll deduction policies.