

Time for employers to brush up on labor standards

On Monday, Aug. 23, the new Department of Labor regulations redefining the white-collar exemptions to the Fair Labor Standards Act will go into effect. All FLSA-covered employers will be subject to these new regulations.

While still possible, at this point it does not appear that either Congress or President Bush will act to derail the new regulations before their scheduled effective date.

What does this mean for Oregon employers? It is still up in the air. When there is a conflict between federal and state laws, employers who are subject to both must apply the standard most beneficial to the employee. In general, Oregon law and regulations pertaining to the exemptions were patterned after the current, but soon to be old, FLSA regulations.

There are some differences between them, however, and the Bureau of Labor

and Industries will be providing guidance on this soon. For the present, we suggest the following five steps:

- Review and be ready to revise classifications of employees.

Given that the new federal salary level (\$455/week) is higher than the current Oregon exempt level (\$276/week), convert low-paid supervisory personnel and other employees earning less than \$455/week to a nonexempt status.

Consider converting any misclassified employees to a nonexempt status now. It may be a good time to correct past practices.

- Train your payroll department, supervisors and managers on the new rules, particularly the salary-basis test rules regarding unlawful deductions, so that they can recharacterize any full- or part-time employees earning less than \$455/week.

- Prepare for the possible adoption of the highly compensated employee exemption.

The FLSA's highly compensated employee exemption generally applies to employees who earn more than \$100,000 annually. In anticipation of the possibility that Oregon will adopt that exemption, review employee job descriptions to determine who might meet it.

- Review and be prepared to revise job descriptions in light of the new regulations.

Describe actual duties and "discretion and independent judgment" in light of the new regulations. Specifically give executives the duty and the authority to hire or fire or to make recommendations about those subjects that will be given particular weight. Weigh and document the position's primary duty.

- Revise policies and handbooks to comply with the salary-basis test.

Be sure you are not making unlawful wage deductions.

Consider allowing disciplinary deductions in full-day increments, but only if the Bureau of Labor and Industries agrees. Currently, disciplinary deductions for an otherwise exempt employ-

ee's salary in increments of less than a full week generally will violate the salary-basis test and jeopardize the employee's exempt status.

Add in a "safe harbor" policy. Under the new FLSA rules, if an employer has a clearly communicated policy that prohibits unlawful deductions from exempt employees' salaries, includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, then the employer will not lose the exemption for any employee unless it willfully violates the policy by continuing to make unlawful deductions after receiving an employee's complaint.

Oregon employers should implement such a safe harbor plan now. While it may not help for an Oregon violation if the Bureau of Labor and Industries does not adopt it, it will help with any federal claims.

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Guest Opinion

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