

Local Government Insurance Trust

RISK MANAGEMENT BULLETIN

No. 97

August 23, 2004

Update Concerning the Department of Labor New Fair Labor Standards Act Rules For Exempt Employees

On April 23, 2004 some new rules regarding the Fair Labor Standards Act (FLSA) were published in the Federal Register. These go into effect August 23, 2004. They can be viewed and downloaded at: <http://www.dol.gov/esa/regs/fedreg/final/2004009016.htm>.

FLSA mandates certain requirements for “nonexempt” and “exempt” employees, and for “minimum wage”, and “overtime wage”.

The new rules update the requirements governing overtime pay eligibility for workers under FLSA. This is significant in that they will:

- expand the number of salaried workers eligible for overtime pay,
- clarify and strengthen overtime protections for many workers,
- address FLSA exemptions for workers classified as executive, administrative, and professional employees,
- provide a “Safe Harbor” provision which protects employers from the current consequences of making impermissible deductions.

The purpose of this bulletin is to supply you with some actions that you can take to ensure continued compliance with the FLSA:

- Reexamine positions to make sure you've accurately categorized your personnel as exempt or nonexempt under the new exemption tests. Where exempt/nonexempt status isn't clear for any position under the new tests, consider revising job duties to clarify status one way or the other.
- Pay particular attention to those “blue collar” and “public safety” categories where the new regulations make it very clear that certain positions can never be viewed as exempt.
- Review your deduction and pay-docking policies and practices, and make sure they are in compliance with the new requirements. Avail yourself of the “safe harbor” provisions by making sure you have in place (and that you clearly communicate) a policy that prohibits improper deductions; provides a complaint mechanism; reimburses employees for any wrongful deductions; and commits to future compliance with the FLSA.

Sponsoring Organizations



Finally, now is a good time to review all of your FLSA policies and practices. If you have concerns about any of your policies, even longstanding ones, this is a good time to review them with your town or county attorney and make any necessary corrections to them. LGIT members are welcome to use the LGIT Employment Liability Hotlines (800-845-8055 or 410-625-5981) for FLSA-related questions.

LGIT thanks Ms. Tami Tanoue, CIRSA General Council/Claims Manager, Colorado Inter-Governmental Risk Sharing Agency for our use of materials included in the CIRSA Coverage Line Newsletter.

This bulletin is intended to be merely informational and is not intended to be used as the basis for any compliance with federal, state or local laws, regulations or rules, nor is it intended to substitute for the advice of legal counsel.