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Salary Tests

Proposed changes to FLSA outlined.

By Diane Faulkner

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Editor's Note: This article is bonus coverage from "Wage and Hour Revisited" in the September issue of CUES' Credit Union Management.

After nearly 30 years, the U.S. Department of Labor is attempting to update the Fair Labor Standards Act to bring it into the digital age. According to the DOL, the new rules are supposed to clarify the old rules and make them easier to administer. The changes, if passed, are supposed to add overtime protection to 1.3 million low-earning minimum salaried workers, strengthen overtime protection for an additional 10.7 million hourly workers and enhance economic growth by reducing regulatory red tape, cut litigation costs and stimulate economic growth.

Much of the confusion in the FLSA comes from the salary basis tests. Here are the old long and short tests and the proposed, combined test for several exempt positions.

Executive Employees

Long Test		Short Test	Proposed Standard Test	
\$\$	\$155 wk	\$250 wk	\$\$	\$425 wk
D u t j e s	Primary Duty: Management of the enterprise or a recognized department or subdivision.	Primary Duty: Management of the enterprise or a recognized department or subdivision.	D u t j e s	Primary Duty: Management of the enterprise or a recognized department or subdivision.
	<ul style="list-style-type: none"> Customarily and regularly directs the work of at least two other employees. 	<ul style="list-style-type: none"> Customarily and regularly directs the work of at least two other employees. 		<ul style="list-style-type: none"> Customarily and regularly directs the work of at least two other employees.
	<ul style="list-style-type: none"> Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight). 			<ul style="list-style-type: none"> Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status are given particular weight).
	<ul style="list-style-type: none"> Customarily and regularly exercises discretion. 			<ul style="list-style-type: none"> While not a part of the "test," any employee who owns at least a 20% equity interest in the enterprise would be considered an exempt executive.
	<ul style="list-style-type: none"> Does not devote more than 20% (40% in retail or service establishments) of time to activities that are not directly and closely related to exempt work. 			

Administrative Employees

Long Test		Short Test	Proposed Standard Test	
\$\$	\$155 wk	\$250 wk	\$\$	\$425 wk
D u t i e s	<p>Primary Duty: Performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers.</p> <ul style="list-style-type: none"> • Customarily and regularly exercises discretion and independent judgment. • Regularly and directly assists a proprietor, or exempt executive or administrative employee; OR performs specialized or technical work requiring special knowledge under only general supervision; OR executes special assignments under only general supervision. • Does not devote more than 20% (40% in retail or service establishments) of time to activities that are not directly and closely related to exempt work. 	<p>Primary Duty: Performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers.</p> <ul style="list-style-type: none"> • Customarily and regularly exercises discretion and independent judgment. 	D u t i e s	<p>Primary Duty: Performing office or non-manual work directly related to management or general business operations of the employer or the employer's customers.</p> <ul style="list-style-type: none"> • Holds a "position of responsibility" with the employer, defined as either (1) performing work of substantial importance or (2) performing a high level of skill or training.

Learned Professional Employees

Long Test		Short Test	Proposed Standard Test	
\$\$	\$170 wk	\$250 wk	\$\$	\$425 wk
D u t i e	<p>Primary Duty: Performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <ul style="list-style-type: none"> • Consistently exercises discretion and judgment. • Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time. 	<p>Primary Duty: Performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <ul style="list-style-type: none"> • Consistently exercises discretion and judgment. 	D u t i e	<p>Primary Duty: Performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience.</p> <p><i>* To recognize areas covered by the learned professional exemption are expanding, a provision notes that whenever a specialized</i></p>

S	<ul style="list-style-type: none">Does not devote more than 20% of time to activities that are not an essential part of and necessarily incident to exempt work. <p><i>* "Advanced knowledge" requirement is satisfied through academic instruction rather than knowledge gained through work experience.</i></p>	S	<p><i>degree becomes a standard job requirement, that particular occupation can then be considered a "learned profession."</i></p> <p><i>**"Advanced knowledge" is acquired through a combination of formal college-level education, training and work experience.</i></p>
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