

How the New Changes to the FLSA will Affect Your Business



Presented by:

Kenny Colbert, SPHR, SHRM-SCP

President & CEO

The Employers Association

November 6, 2015

www.employersassoc.com

• **Fast Food Worker Protests**

- “No More Burgers, No More Fries – until our Wages are Supersized”
- We Work, We Sweat – for \$15 on our check.”

Minimum Wage

Core Membership
Services

Human Resources
& Compliance

Training
& Assessments

Surveys, Research
& Compensation

Benefits
Services

- No strong effort at federal level, or in NC Legislature, to increase minimum wage
- Could be a bargaining chip between Democrats/Republicans at federal level
- NC law forbids cities / municipalities from enacting minimum wage rates that would impact private companies
- City of Greensboro - \$12/hr. minimum wage, \$15 by 2020

Proposed Changes to the White Collar Exemptions

Core Membership
Services

Human Resources
& Compliance

Training
& Assessments

Surveys, Research
& Compensation

Benefits
Services

- **“White Collar” Exemptions**

- Executive
- Administrative
- Learned Professional
- Creative Professional
- Computer
- Outside Sales



Proposed Changes to the White Collar Exemptions

Core Membership
Services

Human Resources
& Compliance

Training
& Assessments

Surveys, Research
& Compensation

Benefits
Services

**Current
Regulations
Require:**

- Salary Level - \$455/week
- Salary Basis
- Job Duties

Problem Scenario

Manager at fast food chain earns \$500 / week

$\$500 / 50 \text{ hours} = \$10.00/\text{hour}$

$\$7.25 \times 1.5 = \$10.88/\text{hour}$

Proposed Changes to the White Collar Exemptions

Core Membership
Services

Human Resources
& Compliance

Training
& Assessments

Surveys, Research
& Compensation

Benefits
Services

- From **1940 to 1975** the salary level was raised every 5 to 10 years
- **1975:** \$155/week for executive & administrative employees, \$170 for professionals and \$250 for the short test
- **2004:** \$455/week
- President Obama directed DOL to make changes in March 2014. Wants five million more employees to be eligible for overtime.
- Protests in fast food industry prompted changes

Proposed Changes to the White Collar Exemptions

Core Membership
Services

Human Resources
& Compliance

Training
& Assessments

Surveys, Research
& Compensation

Benefits
Services

- **Proposed Salary Level**
40th percentile
 - Currently \$921/week
(\$47,892 annually)
 - Expected to be \$970/week
(\$50,440 annually) by effective date

- **Highly Compensated Test**
 - Currently those employees making a salary of at least \$100,000 per year
 - Proposal to move to the 90th percentile
 - Currently \$122,148

Proposed Changes to the White Collar Exemptions

Core Membership
Services

Human Resources
& Compliance

Training
& Assessments

Surveys, Research
& Compensation

Benefits
Services

- **Proposal for Automatic Annual Increases**
 - Two Options:
 - 1) Use a fixed percentile, or
 - 2) The Consumer Price Index (CPI-U)

Proposed Changes to the White Collar Exemptions

Core Membership
Services

Human Resources
& Compliance

Training
& Assessments

Surveys, Research
& Compensation

Benefits
Services

- **Salary Basis Test**
 - No changes mentioned in the proposed regulations (see handouts)
- Possible changes to **“Duties Test”**
 - Current requirement is that supervision must be a “primary” duty under the Executive exemption
 - Executive test may change to say that incumbent must spend 50% of time as a supervisor (Current requirement in CA)

Proposed Changes to the White Collar Exemptions

Core Membership
Services

Human Resources
& Compliance

Training
& Assessments

Surveys, Research
& Compensation

Benefits
Services

- **DOL asked for comments on:**
 - Highly compensated salary level
 - Method for automatic increases
 - Possibility of including nondiscretionary bonuses & incentives to make up no more than 10% of the salary level
 - Changes to the “duties test”
 - Examples of exempt computer professionals

- **Timeline for Comments**

- The Notice of Proposed Rulemaking (NPRM) published in the Federal Register on 7/6/15
- Open for public comments until 9/4/15
- Go to:
www.regulations.gov/#!documentDetail;D=WHD-2015-0001-0001

Proposed Changes to the White Collar Exemptions

Core Membership Services

Human Resources & Compliance

Training & Assessments

Surveys, Research & Compensation

Benefits Services

Possible Implementation Timeline:

	2003 Actual		2015 / 2016 Prediction	
	<u>Date</u>	<u>Days</u>	<u>Date</u>	<u>Days</u>
NPRM Published	3/31/03		7/6/15	
End of Comment Period	6/30/03	90	9/4/15	60
Final Rule Published	4/23/04	293	3/16 or 12/15	180 or 100
Effective Date	8/23/04	120	6/16 or 3/16	90 or 120

Proposed Changes to the White Collar Exemptions

Core Membership
Services

Human Resources
& Compliance

Training
& Assessments

Surveys, Research
& Compensation

Benefits
Services

- **Next Steps:**

- Identify exempt employees making less than \$50,440 per year
- Develop a strategy for affected employees
- Account for increases in budget
- Start planning for communication and administration of reclassifications

Wage & Hour Administrator's Interpretation 2015-1

- http://www.dol.gov/whd/workers/Misclassification/AI-2015_1.htm
- Issued 7/15/15
- “Suffer or permit to work” vs. common law control test

- **Economic Realities Test:**
 1. Is the Work an Integral Part of the Employer's Business?
 2. Does the Worker's Managerial Skill Affect the Worker's Opportunity for Profit or Loss?
 3. How Does the Worker's Relative Investment Compare to the Employer's Investment?
 4. Does the Work Performed Require Special Skill and Initiative?
 5. Is the Relationship between the Worker and the Employer Permanent or Indefinite?
 6. What is the Nature and Degree of the Employer's Control?

“In sum, most workers are employees under the FLSA’s broad definitions. The very broad definition of employment under the FLSA as “to suffer or permit to work” and the Act’s intended expansive coverage for workers must be considered when applying the economic realities factors to determine whether a worker is an employee or an independent contractor.”

– W&H Administrator’s Interpretation

**Core Membership
Services**

**Human Resources
& Compliance**

**Training
& Assessments**

**Surveys, Research
& Compensation**

**Benefits
Services**

Questions?



Thank You!

Contact us:

www.employersassoc.com

704-522-8011

kcolbert@employersassoc.com