

Attention All Employers!

Are You Ready For:

- **New Family Temporary Disability Insurance Benefit Rights, Effective July 1, 2004**
Even if you do not currently employ 50 or more employees, the new Family Temporary Disability Insurance Benefits will affect your business.
- **New Department of Labor (DOL) Overtime Regulations, Effective August 23, 2004**
Despite the rumor that the new DOL Regulations will not have an impact on California employers since the California wage and hour laws are typically more stringent, the new regulations *will* have an impact since the White Collar exemptions incorporate some of the federal regulations.

Summary of New DOL Overtime Regulations

- Clarify the long and short tests for determining whether an employee satisfies the white-collar exemption,
- Raise the minimum salary requirement for exempt employees,
- Allow employers to deny overtime to “highly compensated” employees who have minimal exempt duties,
- Allow employers to legally suspend an exempt employee for misconduct of less than a week,
- Provide a new “safe harbor” making it easier for employers to correct improper deductions from an exempt employee’s pay, and
- Relax educational requirements for employees to be classified as exempt professionals.

FairPay Fact Sheet by Exemption

Employers can obtain DOL Fact Sheets by visiting:

http://www.dol.gov/esa/regs/compliance/whd/fairpay/fact_exemption.htm or
http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17g_salary.htm

EXEMPTION	CALIFORNIA	FLSA (eff. 8/23/04)
<p>Professional</p> <p>(White Collar)</p>	<ul style="list-style-type: none"> ○ offsets for jury fees, witness fees and military pay; (no partial pay deductions for partial week absence) ○ initial or terminal week of employment; ○ deductions for penalties imposed for violations of significant safety rules. 	<p>week absence)</p> <ul style="list-style-type: none"> ○ initial or terminal week of employment; ○ deductions for penalties imposed for violations of significant safety rules; <u>and</u> <p><u>NEW</u></p> <ul style="list-style-type: none"> ○ unpaid disciplinary suspension of one or more full days (compared to former rule of at least one full week), provided such suspension is imposed in good faith for an infraction of “serious workplace conduct” rules pursuant to written policy applicable to all employees (<i>i.e.</i>, sexual harassment, drug violation, violations of state or federal laws).
<p>(White Collar)</p>	<p><u>Window of Correction</u></p> <p>Where an impermissible deductions is either (a) inadvertent or (b) made for reasons other than lack of work, the exemption will <u>not</u> be lost if the employer reimburses the employee for such deductions and promises to comply in the future.</p>	<p><u>Effect of Improper Deductions</u></p> <ol style="list-style-type: none"> 1. More protection if an employer has an “actual practice” of making improper deductions, the exemption will be lost for the period in which the improper deduction(s) was made, <u>but</u> only for employees in the same job classification working for the same manager(s) responsible for the deduction. 29 CFR § 541.603(b). <p><u>NEW</u></p> <ol style="list-style-type: none"> 2. A “safe harbor” if an employer (a) has clearly communicated a policy against improper deductions, which includes a complaint procedure, (b) reimburses any improper deductions, and (c) makes a good faith commitment to comply in the future, the exemption will not be lost for an employee unless the employer willfully continues the deductions after receiving complaints. 29 CFR § 541.603(d).

EXEMPTION	CALIFORNIA	FLSA (eff. 8/23/04)
Skilled Computer	<ul style="list-style-type: none"> • salary level = minimum of \$44.63/hr. 	<ul style="list-style-type: none"> • salary level = minimum of \$23,660/yr or \$455/wk; OR <ul style="list-style-type: none"> • \$27.63/hr;
Highly Compensated Employee	Not Applicable	<u>NEW</u> <ul style="list-style-type: none"> • salary ≥ \$100,000/yr

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	DUTIES TEST	DUTIES TEST
Executive	<ul style="list-style-type: none"> • supervise 2 or more employees; • customarily use discretion and independent judgment, <u>and</u> • perform <i>exempt</i> duties over 50% of the workweek. <p><u>What are “exempt” duties?</u></p> <p>The white-collar exemptions incorporate federal standards for guidance regarding the duties that will also qualify as exempt under state law. 29 C.F.R. 541.108-541.110</p> <ul style="list-style-type: none"> - <u>§541.108</u>: activities performed concurrent with exempt duties because they are <i>directly and closely related</i> - <u>§541.109</u>: emergency work - <u>§541.110</u>: occasional tasks 	<ul style="list-style-type: none"> • <i>primary</i> duty managing enterprise or customarily recognized dept./ subdivision; • regularly direct work of at least two full-time employees; <u>and</u> • authority to hire, fire, promote, etc. or suggestions of change of status must be given weight
Administrative	<ul style="list-style-type: none"> • perform office, non-manual work directly related to management policies or general business operations of the employer or customers, • perform, under general supervision, special assignments and tasks, • customarily use discretion and independent judgment, <u>and</u> • perform exempt work over 50% of the workweek. 	<ul style="list-style-type: none"> • <i>primary</i> duty performing office or non-manual work directly related to management or general business operations; (<u>NEW</u>: eliminated the word “policies”) <u>and</u> • <i>primary</i> duty exercising discretion and judgment.
Professional	<ul style="list-style-type: none"> • customarily engage in the use of discretion and independent judgment, <u>and</u> 	<ul style="list-style-type: none"> • <i>primary</i> duty performing work requiring advanced knowledge, predominantly intellectual in character

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	<ul style="list-style-type: none"> • practice and be licensed or certified by the State of California in one of eight recognized professions <ul style="list-style-type: none"> - law - dentistry - medicine (not nurses generally, but includes certified nurse practitioners, clinical nurse specialists, nurse anesthetists, and nurse midwives), - architecture, - engineering (not junior engineers or draftsmen), - teaching, - accounting, or - learned or artistic professional (requires advanced knowledge of science or learning through prolonged course of specialized study and work that is original or creative in character. 	<p>and requiring exercise of discretion and judgment;</p> <ul style="list-style-type: none"> • primary duty performing work requiring invention, imagination, talent in recognized field of artistic or creative endeavor <u>OR</u> • advanced knowledge in a field of science or learning; <u>and</u> • advanced knowledge customarily acquired by prolonged course of specialized instruction.

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<p>Skilled Computer</p>	<ul style="list-style-type: none"> • highly skilled in theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering, <u>and</u> • <i>primarily</i> (more than 50% of the workweek) perform work that is intellectual or creative and requires the exercise or discretion and independent judgment. <p><u>Primarily engaged in:</u></p> <ul style="list-style-type: none"> - application of system analysis techniques to determine hardware, software, or system specifications, - design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes based on and related to user or system design specifications, <u>OR</u> - documentation, testing, creation or modification of computer programs related to the design of the software or hardware. <ul style="list-style-type: none"> • Expressly <u>excludes</u> trainees or entry-level employees, computer employees who don't have the skills to work independently without supervision, engineers, drafters, machinists, or "other professionals" whose work is facilitated by computers, but who are not in a systems analysis or programming occupation, employees who operate, manufacture, or maintain computers and related equipment, employees 	<ul style="list-style-type: none"> • employed as computer systems analyst, programmer, software engineer, or other similarly skilled worker performing the following duties; <u>and</u> • <i>primary duty</i> includes: <ul style="list-style-type: none"> - the application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional specs; - the design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specs; - the design, documentation, testing, creation or modification of computer programs related to machine operating systems; - a combination of the above duties. • Expressly <u>excludes</u> employees in computer manufacture or repair

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	who write box labels, product descriptions, and similar written materials for print or onscreen, or employees who create imagery for effects used in the motion picture, television, or theatrical industry.	
Highly Compensated Employee	Not Applicable	<u>NEW</u> <ul style="list-style-type: none"> • customarily and regularly perform one or more exempt duties of an executive, administrative or professional employee.

Summary of New Family Temporary Disability Insurance (FTDI) Benefits

- This new law amends the Unemployment Insurance Code and provides a new paid benefit to qualifying employees,
- A State mandated program which requires employers to take increased .08 percent SDI payroll deduction starting January 1, 2003,
- Requires all employers to distribute written notice to employees regarding their rights and benefits under the law effective January 1, 2003,
- Applies to all employers regardless of number of individuals employed by the business,
- Creates a new paid *benefit* for absences due to care for immediate family members or domestic partner (or the domestic partner's child) with a serious health condition or to bond with a new child,
- There are no eligibility requirements,
- There is no guaranteed right to reinstatement after time off during which received benefits,
- There is a seven day waiting period before an employee can receive FTDI benefits,
- Employees can receive up to six weeks of benefits ranging from \$50 per week up to \$728 per week in 2004,
- Benefits are fully funded by employee only contributions in the State Disability Insurance (SDI) fund,

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All employers should have a written policy setting for the foregoing to ensure that it is complying with the notice requirements of this new law, and reaffirming the new benefit does not guarantee reinstatement following time off which may entitle the employee to receive paid benefits.

If there is a written policy, an employer can require:

- an employee to utilize up to two weeks of accrued vacation before being able to collect benefits,
- medical certification from the employee to verify eligibility for the benefit,
- time off when receiving benefits to run concurrently with any FMLA/CFRA leave,
- advance notice be given to request time off to receive benefits,
- approval of request for time off, with reaffirmation that with approval there is still no guaranteed right to reinstatement,
- no guaranteed reinstatement.

Employers can obtain a copy of a poster and the brochure setting forth the rights and benefits which are required to be distributed to all new employees hired after January 1, 2003, and any employee applying for the paid benefit after July 1, 2003, at www.edd.cahwnet.gov/direp/pflpub.asp

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