

## DOL releases new rules on white-collar exemptions

On April 20, 2004, the U.S. Department of Labor (DOL) issued its updated regulations on “white collar” exemptions from the Fair Labor Standards Act (FLSA) overtime requirements. The new rules go into effect on August 23, 2004.

### Background

The FLSA generally requires employers to pay overtime to their employees who work in excess of 40 hours per week. However, the FLSA exempts the following white collar employees from these rules: 1) bona fide executive, administrative and professional employees, 2.) highly-skilled computer-related employees, and 3.) outside sales employees. Under the existing outdated rules, employees who earn as little as \$8,060 per year can be considered exempt if they meet certain criteria.

### The New Rules

Under the new rules, almost all employees earning less than \$23,660 per year (\$455 per week) will be considered nonexempt and entitled to overtime pay. Furthermore, highly compensated office workers earning \$100,000 or more per year may now be considered exempt. For those earning between \$23,660 and \$100,000, a “duties test” will apply to determine if the employee is exempt or not. Some of the exemptions are highlighted below:

**Executive Employees**—To qualify for the new executive exemption, an employee must:

- Have the primary duty of managing the enterprise or a subdivision of the enterprise.
- Customarily and regularly direct the work of two or more other employees.

- Have the authority to hire or fire (or recommend hiring, firing and promotions of) other employees.

**Administrative Employees**—To qualify for the administrative exemption, the employee must:

- Have the primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers.
- As a primary duty, exercise discretion and independent judgment with respect to matters of significance.

Some jobs do not qualify for this exemption, including: inspection work, examiners and graders, and public sector inspectors and investigators.

**Professional Employees**—This exemption is for two types of workers: creative professionals and learned professionals. The exemption for creative professionals has not changed significantly. To qualify for the learned professionals’ exemption, an employee must have:

- The primary duty of work requiring advanced knowledge, which is predominantly intellectual in character and includes work requiring the consistent exercise of discretion and judgment.
- Advanced knowledge in a field of science or learning.
- Advanced knowledge customarily (but not always) acquired by a prolonged course of specialized intellectual instruction.

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### County Technical Services, Inc.

800 Grant St., Suite 400  
Denver CO 80203

303.861.0507  
FAX: 303.861.2832

Technical Updates are available online at: [www.ctsi.org](http://www.ctsi.org)

## DOL white-collar exemptions (continued)

**Computer Employees**—To qualify for the computer professional employee exemption, an employee must have at least one of the following primary duties:

- Apply systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications
- Design, develop, document, analyze, create, test or modify computer systems or programs, including prototypes, based on and related to use or system design specifications
- Design, test, create, or modify computer programs related to machine operating systems.

### **Blue Collar Employees and First Responders**

**Remain Nonexempt**—The new rules clarify the *nonexempt* status of blue collar employees and most first responders, regardless of their compensation. Blue collar employees include manual laborers and employees who perform work involving repetitive operations with their hands, physical skills and energy. First responders include police officers, detectives, investigators, correctional officers, parole and probation officers, firefighters, paramedics, EMTs and rescue workers.

### **What Should Counties Do?**

Counties should evaluate how the updated white collar exemptions will affect their workforce before the new rules take effect in August. Counties must evaluate the actual duties performed by their employees to determine which employees are exempt. Failure to classify employees correctly may result in costly litigation and DOL penalties.

For more information, contact CTSI at 303-861-0507.