

Fair Labor Standards Act and Illinois Statutory Changes

New Overtime Rules New Illinois Law for 2017

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Overview

- History
- Coverage
- Exempt vs. non-exempt

Exempt (Salary*) vs. Non-Exempt (Hourly*)

- Explanation

Exempt - Exemptions

- EAP
- HCE
- Computer employees
- Outside sales

Executive Exemptions

- Salary
- Primary duty
- Direction of employees
- Authority to hire or fire

Administrative Exemption

- Office or non-manual work
- Exercises discretion and independent judgment

Learned Professional Exemption

- Work requiring specialized intellectual instruction
- Predominantly intellectual in character

Creative Professional Exemption

- Work requiring invention, imagination, originality or talent

Highly Compensated Employees

- Must be office or non-manual work
- Salary

Computer Employee Exemption

- Compensated either on a salary or fee basis
- Computer system analysis, computer programmer, software engineer or similar
- Primary duty application of system analysis or design

Outside Sales Exemption

- Primary duty making sales or obtaining orders or contracts for services
- Customarily and regularly engaged away from the employer's place or places of business

Salary Test

- \$913 per week (previously \$455 per week)
- Annual salary (\$47,476) based on 40th percentile of full-time salaried workers in the lowest wage Census region
- However, an employee's exemption status is always determined on a work week basis

Bonuses

- Non-discretionary bonuses count toward the standard salary level
- Must be paid quarterly or more frequently

Highly Compensated Employees (HCE)

- 90th percentile of earnings of full-time salaried workers nationally (\$134,000)
- Must earn at least \$913 per week
- Must still perform exempt duties on a “customary and regular” basis
- Computer professional exemption
- Hourly salary \$27.63
- Weekly standard salary \$913 per week

Outside Sales Exemption

- Employees are not subject to the salary basis or salary level requirements

Additional Exemption from Salary Requirement

- Licensed or certified doctors, lawyers and teachers
- Academic administrative employees in an “educational establishment”

Options for Dealing with Non-Exempt Employees

- Increased salary of an employee who meets the duties test
- Pay overtime premium for overtime hours worked
- Reduce or eliminate overtime hours
- Reduce the amount of pay allocated to base salary
- Use combination of these responses

Employee Sick Leave Act

- Act takes effect January 1, 2017
- Covers all employers who currently provide “personal sick leave benefits”

“Personal Sick Leave Benefits”

- Time accrued and available to an employee
- Used as a result of an absence from work due to illness, injury or medical appointment
- Does not include absences from work for which compensation is provided (disability)

Expanded Use of Sick Leave

- Employee may use sick leave for:
 - Child
 - Spouse
 - Sibling
 - Parent
 - Mother-in-law, father-in-law
 - Grandchild, grandparent or step-parent

Limitation

- May limit leave for relatives to the six months accrual

FMLA

- This Act does not extend the maximum period of leave to which an employee is entitled to under the Family and Medical Leave Act

Retaliation Prohibited

- Complaints filed with the Illinois Department of Labor

Illinois Freedom to Work Act

- Takes effect January 1, 2017
- Applies to all employers in Illinois

“Covenant not to Compete”

- Restriction from performing:
 - (A) Any work for another employer for a specified period of time;
 - (B) Any work in a specific geographic area; or
 - (C) Work for another employer that is similar to the work of an employee

“Low-Wage Employee”

- \$13.00 per hour or less in Illinois
- Should the minimum wage in Illinois (currently \$8.25, \$10.50 per hour in Chicago) increase

“Exemptions”

- Applies to all employers
- Does not apply to governmental or quasi-governmental bodies

Issues under Illinois Freedom to Work Act

- Solicitation of clients or customers
- Solicitation of employees
- Use of confidential information

Child Bereavement Leave Act

- Act took effect on July 29, 2016
- Covers employers and eligible employees as those terms are defined by the federal Family and Medical Leave Act (“FMLA”)

Benefits

- All employees are entitled to a maximum of ten workdays of unpaid leave to attend a child's funeral; or
- To make arrangements necessitated by the death of a child; or
- Grieve the death of the child

Extended Leave

- Death of more than one child during a twelve-month period
- Six weeks' unpaid leave

“Child”

- Son or daughter who is a biological, adopted, foster, or step-child
- Legal ward
- Child of a person standing in *loco parentis*
- Age of child does not matter

Use of other Benefits

- Employee may substitute existing paid or unpaid leave to which they are entitled
- Does not create a right for an employee to take unpaid leave that exceeds time allowed by FMLA

Notice and Documentation

- 48 hours' advance notice unless unreasonable
- Reasonable documentation may be required:
 - (1) A death certificate
 - (2) Published obituary
 - (3) Written verification from funeral home or church

Retaliation

- Any violation may be reported by the employee within 60 days of the most recent event
- First employer offense penalty not to exceed \$500.00
- Second or subsequent offense a penalty of up to \$1,000.00

Amendments

- Freedom from Location Surveillance Act
- Victims' Economic Security and Safety Act
- State Construction Minority and Female Building Trades Act