

# **WAGE AND HOUR UPDATE:**

## **EXAMINING DEVELOPING TRENDS UNDER THE FLSA AND RELATED WAGE AND HOUR REGULATIONS**

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### **Overview**

- Status of updates to exempt employee salary thresholds
- Compensable time in the modern economy
- Changes to unpaid intern test
- Equal pay in the era of #MeToo

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# EVOLVING FLSA COMPENSATION TESTS FOR EXEMPT EMPLOYEES

## Exempt Employees: A History

- Fair Labor Standards Act (FLSA) enacted in 1938 as key piece of New Deal legislation
- Regulates minimum wage and overtime
- Certain classes of employees exempt from overtime:
  - Executive, Administrative, Professional employees
  - Outside salespeople
  - Others added in ensuing years, including for Computer Professionals
- Most common exemptions often referred to as “EAP exemptions” (Executive, Administrative, Professional)

## Tests for EAP Exemptions

- FLSA does not directly define the scope of the EAP exemptions
- Department of Labor (DOL) regulations define the bounds of the exemptions
- Many iterations of the regulations since 1938
- Key features of the exemption tests:
  - Duties
  - Minimum compensation
  - Basis of compensation (salary, fee, etc.)

## Duties Tests

- **Executive Exemption Example:**
  1. Primary duty must be managing the enterprise, or a customarily recognized department or subdivision.
  2. Must also customarily and regularly direct the work of at least two or more other FTEs or their equivalents.
  3. Must have authority to hire or fire other employees, or the employer must give weight to the executive's recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees.

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