

# **Strategic Developments Under the FLSA**

**Robert E. Sheeder  
Bracewell LLP**

## **Focus**

### **Recent Focus of FLSA Actions:**

- **Whether an employee has been properly classified as exempt or as an independent contractor**
- **Whether an employee has received all overtime to which he/she is entitled**
- **Whether an employee is entitled to overtime pay for preliminary and/or postliminary “off the clock” work**

2

## **White Collar Exemptions: Executive Exemption**

- **To qualify for the executive employee exemption, all of the following tests must be met:**
  - Must be compensated on a salary basis at a rate not less than \$455 per week (to be increased, per Proposed Rules);
  - Primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
  - Must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
  - Must have the authority, or opinion must be given weight, in decision to hire or fire other employees

3

## **White Collar Exemptions: Administrative Exemption**

- **To qualify for the administrative employee exemption, all of the following tests must be met:**
  - Must be compensated on a salary basis at a rate not less than \$455 per week (to be increased, per Proposed Rules);
  - Primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
  - Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

4

## **White Collar Exemptions: Professional Exemption**

- **To qualify for the professional employee exemption, all of the following tests must be met:**
  - Must be compensated on a salary basis at a rate not less than \$455 per week (to be increased, per Proposed Rules);
  - Primary duty must be the performance of work requiring advanced knowledge (work that is intellectual in character and which includes work requiring the consistent exercise of discretion and judgment);
  - Advanced knowledge must be in a field of science or learning, customarily acquired by a prolonged course of specialized intellectual instruction.

5

## **White Collar Exemptions: Highly Compensated Employee Exemption**

- **To qualify for the highly compensated employee exemption, all of the following tests must be met:**
  - Total annual compensation of at least \$100,000 (to be increased, per Proposed Rules); and
  - Customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Strategic Developments Under the FLSA

Also available as part of the eCourse  
[2016 Corporate Counsel eConference](#)

First appeared as part of the conference materials for the  
38<sup>th</sup> Annual Corporate Counsel Institute session  
"FLSA Update"