

# THE NEW FLSA REGULATIONS: READY OR NOT

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**FRANK HARTY** put himself through college and law school by playing football and working. He received a B.B.A. with honors in Industrial Relations from the University of Iowa School of Business and graduated Order of the Coif from Drake University Law School where he was Editor in Chief of the Drake Law Review. Frank is a Fellow of the American College of Labor and Employment Lawyers. He is also recognized as a Leading Individual Labor and Employment Lawyer in Iowa by Chambers and Partners and is recognized by The Best Lawyers in America and Great Plains Super Lawyers. Frank is a fellow of the Iowa Academy of Trial Lawyers and the American Board of Trial Advocates. He has taught trial advocacy and employment law at the Drake University Law School. Frank is Past Chair of the Labor and Employment Law Section of the Iowa State Bar Association.

# THE FLSA: OVERVIEW

- **1938 Creature of the Great Depression**
- **Overtime, Minimum Wage, Child Labor**
- **“Suffer or Permit” ...**

## EXEMPTIONS

- **Executive**
- **Administrative**
- **Professional**
- **Creative Professional**
- **Computer Employee**
- **Outside Sales**

## EXEMPTION TEST

- Salary Basis
- Duties Test
- Salary Level...

# **SALARY BASIS TEST**

- **Predetermined Amount**
- **No Reduction Based on Quality or Quantity**
- **DOL Fact Sheet 17G**

## DEDUCTIONS: SAFE HARBOR RULE

- Does not apply to repeated willful violations
- Communicated “no-deduction” policy, reimburse when appropriate, exercise “good faith”
- DOL model policy:  
<http://www.dol.gov/whd/regs/compliance/overtime/modelpolicy.htm>

## **No CHANGES TO SALARY TEST**

## DUTIES TEST: NO CHANGES

- See DOL Fact Sheet 17A



## SALARY LEVEL TEST

- No Inflation Adjustments
- Was \$455/week (\$23,660)

## ATTACKS ON OLD TEST

- Poverty Level (\$24,250)
- Rule making process began March 2014

## NEW MINIMUM SALARY TEST

- **\$913/week (\$47,476)**
- **Subject to change every 3 years**
- **No Automatic Index**
- **December 1, 2016**
- **4 Million New OT Recipients**

## THE “DEATH SPIRAL” OF THE SALARY EXEMPTION?

- 40<sup>th</sup> Percentile
- Hollowed Out 40<sup>th</sup> Percentile

## HIGHLY COMPENSATED EMPLOYEES

- From \$100,000 to \$134,000 Annually
- 2020 Update

# BONUS CREDIT

## POTENTIAL RESPONSE: AUDIT

- Explain reclassification to employees
- Avoid willful mischaracterization
- Clean house “Silver Lining”

## AUDIT

- **Titles and Descriptions**
- **Performance Evaluations**
- **Interviews**
- **Employee Self Assessments**
- **Payroll Review**



## PROBLEM AREAS

- **Small Business, Education, Non-Profit Sectors**
- **Education (admissions, non-instructional, research, athletics, resident life)**
- **Insurance (managers, adjustors, claims)**
- **Unionized Workforce**

# QUESTIONS?

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