

## New Overtime Rules Start August 23, 2004

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August 16, 2004

New federal rules affecting employee overtime take effect August 23, forcing employers across the country to review employees' status to determine whether they fall within the exempt or nonexempt categories to receive overtime. The revision to the Fair Labor Standards Act (FLSA) is estimated by the Department of Labor to make overtime available for 1.3 million low-wage workers, while removing overtime eligibility for some workers making \$100,000 or more annually and are executive, administrative, professional and outside sales employees.

"In recent years, FLSA collective action lawsuits have been the most common type of class action lawsuit," said Michael A. Alaimo, an attorney at Miller, Canfield, Paddock and Stone, P.L.C. and a 15-year veteran in wage and hour investigations and litigation. "The Department of Labor has promised to vigorously enforce the new rules starting August 23. It is therefore critical for business owners, managers and key personnel to ensure that their companies are complying with the law when the deadline arrives."

Last year, when the new regulations were first proposed and made available for public comment, the Michigan-based law firm of Miller Canfield offered suggestions to the Department of Labor regarding the proposed revisions; some of which were subsequently incorporated in the final rules. Since the Department promulgated the final regulations on April 23, 2004, the firm has been helping clients comply with the new requirements.

Federal law requires employers to pay employees time and a half for all hours worked in excess of the 40-hour work week, unless those employees are "exempt." According to Alaimo, even conscientious employers can sometimes be tripped up by requirements that are buried in the 500 or so pages of regulations that govern compliance under the FLSA. For example, employers sometimes rely heavily on an employee's job description in deciding whether they perform exempt duties. However, it is an employee's actual duties that are paramount. Where the actual job duties are found to be non exempt the employer may be liable for unpaid overtime for up to three years.

"Such mistakes can be costly. The statute allows for recovery of back wages and an equal amount in liquidated damages as well as attorney fees," said Alaimo. "Employers should take a proactive approach to make sure their company is in compliance in order to avoid expensive litigation or a Department of Labor audit."

Ensuring appropriate pay policies are established and followed, conducting periodic FLSA training, auditing job descriptions, carefully reviewing duties performed by exempt employees, ensuring that all hours worked by non-exempt employees are recorded accurately, and periodically consulting with a labor attorney are among the key elements to avoiding FLSA liability.

The Fair Labor Standards Act establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and federal, state, and local governments.

Miller Canfield will discuss the new FLSA rules at the upcoming Annual Labor and Employment Law Seminar, held in Troy on October 28. For more information on the seminar and to register, visit [www.millercanfield.com](http://www.millercanfield.com).

The 330-attorney law firm of Miller, Canfield, Paddock and Stone, P.L.C. was established in Detroit in 1852 and has offices in Ann Arbor, Detroit, Grand Rapids, Howell, Kalamazoo, Lansing, Monroe, and Troy, Michigan. Other offices are located in New York City, Pensacola, Florida, Washington, D.C., Windsor, Ontario, and in Gdynia, Katowice, and

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