

## Summary of 541 Final FairPay Regulations

- **Minimum Salary Level Increased:** The new salary level is \$455 for all exemptions (except Outside Sales, which has no salary limit), which is equivalent to \$23,660 per year. This means any employee earning less than \$23,660 per year will be classified as nonexempt.
- **Salary Ceiling Established:** The DOL has established a “salary ceiling” for employees who do not meet the primary duty requirements for the exemption tests, yet could still be considered exempt. The DOL has determined that any employee earning more than \$100,000 per year who meets one of the primary duties requirements yet is not considered exempt could be exempt from overtime. This \$100,000 per year salary must include at least \$455 per week in base salary, however the remaining amount would be considered “total annual compensation.” Total annual compensation can include commissions, non-discretionary bonus and other non-discretionary compensation. Total annual compensation does not include benefits (e.g., 401(k) contributions, payment for medical insurance).
- **Duties Tests Rely on “Primary Duty”:** The new regulations retain the current “short test” reliance on an employee’s primary duty. The new regulations eliminate the long-test rule restricting exempt employees from devoting more than 20 percent of their time in a nonexempt capacity.
  - **Executive:** The executive duties test has three requirements: manage the enterprise (or a recognized department or subdivision); direct the work of two or more full-time employees (or their equivalent); have the authority to hire or fire (or recommendation must be given particular weight)
  - **Administrative:** The administrative duties test has two requirements: perform office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; exercises discretion and independent judgment with respect to matters of significance
  - **Professional:** The professional duties test has been defined in two categories: Learned and Creative. For the Learned Professional, the primary duty is the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment. This advanced knowledge must be in a field of science or learning, and is customarily acquired by a prolonged course of specialized intellectual instruction. For the Creative Professional, the primary duty is the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic endeavor.