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Fair Labor Standards Act FairPay Update

The purpose of this newest piece of legislation is to update the Exemption requirements under the Fair Labor Standards Act. The Fair Labor Standards Act provides an Exemption for the Act's minimum wage and overtime requirements for any employee employed in a bona fide executive, administrative, or professional capacity. The new FairPay Act further defines what is required for an employee to be considered exempt from minimum wage and overtime provisions of the Fair Labor Standards Act. Here are the basic requirements outlined in the FairPay Act:

1. There is a minimum compensation threshold that must first be met: the employee must be compensated no less than \$455.00 per week (\$23,660 per year) on a salary basis. If the employee does not receive at least the \$455.00 per week they can not, regardless of the title, duties or other tests met, be considered exempt, and would therefore be considered non-exempt and must be paid overtime pay at 1 ½ times their regular hourly rate for all hours worked over forty (40) in a week.
2. If the employee meets the first test outlined above they would then be tested under one of three categories, executive, administrative, or professional to determine if they are exempt.

a. Executive Exemption:

1. The employee's primary duty must be managing the business, or managing a customarily recognized department or subdivision of the business, and
2. The employee must customarily and regularly direct the work of AT LEAST TWO of more other FULL-TIME employees or their equivalent, and
3. The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight.

b. Administrative Exemption:

1. The employee's 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
2. The employee's primary duty includes the exercise of discretion and independent judgment with respect to the matters of significance.

c. Professional Exemption:

1. The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominately intellectual in character and which includes work requiring the consistent exercise of discretion and judgment, and
2. The advanced knowledge must be in a field of science or learning and
3. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

*For Teachers in Pre-school, nursery school, child care and day care programs please see attachment.

3. If the employee meets the compensation test in number one above AND all the tests in one of the three categories in number two above, they maybe considered exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act. As an Exempt employee they would be paid a salary for the performance of their job duties regardless of how many or how few hours are required to complete the duties in a given week.