



nobody@a1289.g.akamai.net
05/28/2002 11:12:07 AM

Please respond to nobody@a1289.g.akamai.net

Record Type: Record

To: John Morrall@EOP

cc:

Subject: Suggestion for Regulatory Reform

Name:

National Association of Computer Consultant Businesses, Attn: Mark B. Roberts, COO and General
Couns

Address:

1800 Diagonal Road, Suite 520, Alexandria, VA 22314

Telephone No.:

703-838-2050

E-mail address:

roberts@naccb.org

Name of Guidance:

Regulating Agency:

Department of Labor DOL

Subagency (if any):

Citation (Code of Federal Regulation):

29 C.F.R. Parts 541.1 et seq.

Authority (Statute/Regulation):

29 U.S.C. Section 213

Description of Problem (Nature of Impact and on Whom):

Fair Labor Standards Act FLSA 541: Administrative Exemption to
Overtime Requirements as Applied to the Position of Technical
Recruiter

Regulating Agency:

Department of Labor DOL

Citation: 29 C.F.R. Parts 541.1 et seq.

Authority:

29 U.S.C. Section 213

Description of the Problem:

In 1938, Congress enacted the Fair Labor Standards Act FLSA. Among other things, the Act sets a minimum wage and requires employers to pay time and half to employees who work over forty hours a week. Designed for an industrial economy and workforce, the FLSA has failed to adapt to the realities of the modern workplace.

When it passed the FLSA, Congress recognized that white collar employees did not need the protections of the Act, and therefore, exempted any employee employed in a bona fide executive, administrative or professional capacity from the Acts minimum wage and overtime requirements. Congress did not define these terms within the Act, leaving that task to DOL.

Unfortunately, DOL has not substantially revised the regulations since 1954. Consequently, the regulatory definition of white collar employee is frequently inconsistent with the modern notion of the term, causing much confusion and litigation. Indeed, many highly compensated and highly skilled employees have been classified as nonexempt under the regulations, even though classifying them as such is inconsistent with the intent of the statute.

It is within this context, that particular difficulties have arisen in the application of the administrative exemption to the position of technical recruiter. Technical Recruiters using their experience and independent discretion, identify and select highly-skilled highly-compensated individuals for technical positions such as computer programmers. Given the uncertainty associated with the application of the administrative exemption, well meaning employers have been subject to expensive and lengthy challenges seeking to reclassify technical recruiters as non-exempt. These actions have been initiated by both the Department of Labor and the plaintiffs bar including class action lawsuits.

Proposed Solution:

Fair Labor Standards Act FLSA 541: Administrative Exemption to Overtime Requirements as Applied to the Position of Technical Recruiter

Regulating Agency:

Department of Labor DOL

Citation: 29 C.F.R. Parts 541.1 et seq.

Authority:

29 U.S.C. Section 213

Description of the Problem:

In 1938, Congress enacted the Fair Labor Standards Act FLSA. Among other things, the Act sets a minimum wage and requires employers to pay time and half to employees who work over forty hours a week. Designed for an industrial economy and workforce, the FLSA has failed to adapt to the realities of the modern workplace.

When it passed the FLSA, Congress recognized that white collar employees did not need the protections of the Act, and therefore, exempted any employee employed in a bona fide executive, administrative or professional capacity from the Acts minimum wage and overtime requirements. Congress did not define these terms within the Act, leaving that task to DOL.

Unfortunately, DOL has not substantially revised the regulations since 1954. Consequently, the regulatory definition of white collar employee is frequently inconsistent with the modern notion of the term, causing much confusion and litigation. Indeed, many highly compensated and highly skilled employees have been classified as nonexempt under the regulations, even though classifying them as such is inconsistent with the intent of the statute.

It is within this context, that particular difficulties have arisen in the application of the administrative exemption to the position of technical recruiter. Technical Recruiters using their experience and independent discretion, identify and select highly-skilled highly-compensated individuals for technical positions such as computer programmers. Given the uncertainty associated with the application of the administrative exemption, well meaning employers have been subject to expensive and lengthy challenges seeking to reclassify technical recruiters as non-exempt. These actions have been initiated by both the Department of Labor and the plaintiffs bar including class action lawsuits.

Estimate of Economic Impacts (Quantified Benefits and Costs if possible / Qualified description as needed):

Fair Labor Standards Act FLSA 541: Administrative Exemption to Overtime Requirements as Applied to the Position of Technical Recruiter

Regulating Agency:

Department of Labor DOL

Citation: 29 C.F.R. Parts 541.1 et seq.

Authority:

29 U.S.C. Section 213

Description of the Problem:

In 1938, Congress enacted the Fair Labor Standards Act FLSA. Among other things, the Act sets a minimum wage and requires employers to pay time and half to employees who work over forty hours a week. Designed for an industrial economy and workforce, the FLSA has failed to adapt to the realities of the modern workplace.

When it passed the FLSA, Congress recognized that white collar employees did not need the protections of the Act, and therefore, exempted any employee employed in a bona fide executive, administrative or professional capacity from the Acts minimum wage and overtime requirements. Congress did not define these terms within the Act, leaving that task to DOL.

Unfortunately, DOL has not substantially revised the regulations since 1954. Consequently, the regulatory definition of white collar employee is frequently inconsistent with the modern notion of the term, causing much confusion and litigation. Indeed, many highly compensated and highly skilled employees have been classified as nonexempt under the regulations, even though classifying them as such is inconsistent with the intent of the statute.

It is within this context, that particular difficulties have arisen in the application of the administrative exemption to the position of technical recruiter. Technical Recruiters using their experience and independent discretion, identify and select highly-skilled highly-compensated individuals for technical positions such as computer programmers. Given the uncertainty associated with the application of the administrative exemption, well meaning employers have been subject to expensive and lengthy challenges seeking to reclassify technical recruiters as non-exempt. These actions have been initiated by both the Department of Labor and the plaintiffs bar including class action lawsuits.

Estimate of Economic Impacts (Quantified Benefits and Costs if possible / Qualified description as needed):

Fair Labor Standards Act FLSA 541: Administrative Exemption to Overtime Requirements as Applied to the Position of Technical Recruiter

Regulating Agency:

Department of Labor DOL

Citation: 29 C.F.R. Parts 541.1 et seq.

Authority:

29 U.S.C. Section 213

Description of the Problem:

In 1938, Congress enacted the Fair Labor Standards Act **FLSA**. Among other things, the Act sets a minimum wage and requires employers to pay time and half to employees who work over forty hours a week. Designed for an industrial economy and workforce, the FLSA has failed to adapt to the realities of the modern workplace.

When it passed the FLSA, Congress recognized that white collar employees did not need the protections of the Act, and therefore, exempted any employee employed in a bona fide executive, administrative or professional capacity from the Acts minimum wage and overtime requirements. Congress did not define these terms within the Act, leaving that task to DOL.

Unfortunately, DOL has not substantially revised the regulations since 1954. Consequently, the regulatory definition of white collar employee is frequently inconsistent with the modern notion of the term, causing much confusion and litigation. Indeed, many highly compensated and highly skilled employees have been classified as nonexempt under the regulations, even though classifying them as such is inconsistent with the intent of the statute.

It is within this context, that particular difficulties have arisen in the application of the administrative exemption to the position of technical recruiter. Technical Recruiters using their experience and independent discretion, identify and select highly-skilled highly-compensated individuals for technical positions such as computer programmers. Given the uncertainty associated with the application of the administrative exemption, well meaning employers have been subject to expensive and lengthy challenges seeking to reclassify technical recruiters as non-exempt. These actions have been initiated by both the Department of Labor and the plaintiffs bar including class action lawsuits.