

# The View from Level VII™

## HUMAN RESOURCES

### **NEW OVERTIME RULES – ARE YOU READY?**

In case you didn't know it you're under the gun to come into compliance with new guidelines under the Fair Labor Standards Act (FLSA). The FairPay rules issued by the Department of Labor (DOL) take effect August 23 and will affect the overtime eligibility of millions of Americans. It's critical that you begin evaluating each of your employee's actual job duties and wages under the regulations' new criteria to ensure that employees are accurately classified as exempt or non-exempt. The DOL estimates that more than half of all U.S. companies have incorrectly classified employees under the old rules.

Probably the most important change pertains to the new salary test. It creates essentially three categories.

1. Employees earning under \$23,660 a year (\$455 a week) are guaranteed overtime regardless of their job title or duties.
2. Highly compensated employees earning over \$100,000 who perform at least one exempt duty are exempt from overtime.
3. Employees earning between \$23,660 and \$100,000 would be entitled to overtime unless found exempt under one of the new standard duties test.

Perhaps the one exemption that is used the most is the Administrative exemption. Those who qualify must perform work directly related to assisting with the running or servicing of the business. The new rules require that Administrative employees exercise "discretion and independent judgment with respect to matters of significance." Matters of significance means the level of importance of consequences of the work performed. You can't be an administrative exempt employee if all you are in charge of is taking customers orders.

If you'd like additional information regarding the FLSA changes or desire to have an audit conducted please contact our offices. HR Professional Consultants provides outsourcing and project based Human Resources consulting services for companies of all types and sizes.

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## EMPLOYEE BENEFITS

### **AFFORDABLE (ALMOST) MEDICAL INSURANCE**

It won't come as a surprise to anyone that the most frequent "benefits" concern we encounter is Medical Insurance. Employers are dealing with the rising costs in a number of different ways, but in most cases, the employees are feeling the pressure. Higher copays and deductibles have been common for the past few years. Now, higher employee contribution levels seem to be the growing trend.

With these factors, employers are seeing an increasing number of employees dropping out of medical programs, or not joining at all. It is a considerable gamble to go without any medical coverage. A catastrophic condition could easily bankrupt most individuals, and preventative care (the best way to avoid or reduce the severity catastrophic condition) is usually overlooked in the absence of reasonable co-pays. One large local healthcare provider a new "scaled down" plan offering for 2004. This plan features unique limitations and exclusions to both Medical Services and Prescription Drug Benefits. The rates listed below are effective through the end of calendar year 2004: Single Coverage Per Month \$154.56; and Family Coverage Per Month \$417.42

We would be happy to share more details of this new plan, or any other Medical Benefits information that you may have an interest in.

**Benefits Advantage, Inc.** provides consulting and insurance brokerage services for all types of employee benefits programs. Emphasizing *personal service, creative ideas, and positive results*; Benefits Advantage Inc. has 30 years of industry experience in working with clients.

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*In this and/or future issues you will find short, yet meaningful articles on:*

- Human Resources
- Risk Management
- Executive Compensation
- Executive Benefits
- Employee Benefits
- Private Wealth Planning



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## EXECUTIVE COMPENSATION & BENEFITS

### *MORE REGS COMING - WHAT SHOULD WE EXPECT?*

The following summarizes the most significant changes to nonqualified deferred compensation plan design that has been recently laid out by the Senate in the May 11th Jumpstart Our Business Strength Act of 2004 ("JOBS"), and the House in the June 17th American Jobs Creation Act ("AJC"):

- **Change of Control:** Sec. 16(a) officer/employees of public companies must wait 12 months to withdrawal after a change of control.
- **Deferral Timing:** Compensation deferral must be selected prior to the end of the year preceding that in which "Services" are performed; e.g., deferrals for income in 2005 must be elected in 2004.
- **Financial Triggers:** Plan provisions allowing early withdrawals upon certain financial events within the corporation would be eliminated.
- **Haircut Withdrawals:** Plan provisions allowing early withdrawals subject only to a penalty or haircut would be eliminated
- **Investment Options:** May need to be "comparable" to the company's qualified plan.
- **Plan Payout:** Benefit payouts and timing may not be changed once a method is selected.
- **Separation of Service.** Employees defined as Key Employees may have to wait six months after separation of service to receive payments.
- **Security Option Plans:** Plan designs that allow exchanges of compensation for mutual funds as option property may be disallowed.
- **W-2 Reporting:** Like qualified plan contributions, nonqualified Plan contributions would be required to be recorded on employee's W-2 forms each year.

The House and Senate will likely work in conference committee prior to Summer recess to resolve the differences in their 2 bills. What the result will be, one can only speculate as these bodies often start with something similar and end up with a bill that is entirely different. Nevertheless, it is expected, that new legislation, in some form will pass this year. WFR will keep you apprised of the developments as soon as they occur. And should this legislation become law, we look to be your resource for any questions, review or assistance with plan modification. Please do not hesitate to contact us on this or any other executive benefits matter.

**Jonathan D. Weir, JD. Weir Financial Resources, LLC** is a financial advisory firm offering information, ideas and solutions in Executive Benefits, Business Succession and Private Wealth Planning.

## PRIVATE WEALTH PLANNING

### *CAN A REVOCABLE LIVING TRUST HELP YOU?*

In recent years, revocable living trusts have been touted as a simple, cheap alternative to wills. A living trust gets its name as it is set it up during life-time. Typically, one serves as trustee which provides control of the assets until death. After death, assets are distributed according to the terms of the trust thus by-passing probate, which can be costly and time-consuming. While a useful estate planning tool in some instances, living trusts are not for everybody. Here's a look at some of the pros and cons.:

#### Advantages

- **Business Succession.** A trustee can manage a business within the trust without interruption after death until time of ownership transfer.
- **Avoiding Probate.** A will requires that an estate must be settled in probate court, which becomes a matter of public record. Probate proceedings can be prolonged and lawyers' fees and court costs can become substantial. Living trusts are generally settled without court intervention, which can make the process quicker, cheaper and more private. Local laws should be examined to confirm whether privacy can be ensured.
- **Flexibility.** One can amend or revoke the trust at any time while alive, the trust property can be reclaimed at any point.
- **Control.** A living trust can provide a single receptacle to receive and distribute assets at death. Non-trust assets like life insurance proceeds can be left to your trust if the trust named it as beneficiary (although the proceeds will be subject to estate taxes if the policy is owned at death). Also, where allowed by law, any assets not held in trust can be left in a will and passed to the trust after death by the terms of the will. Thus, the trust can unify the estate so that it can be administered under one document.
- **Asset Management.** If you become disabled or otherwise unable to manage your financial affairs, a living trust and durable power of attorney enable a spouse or anyone else named to act on your behalf to protect your assets without time-consuming court intervention.

#### Disadvantages

- **Tax Myth.** Unless properly drafted, a revocable living trust won't save a dime in estate taxes.
- **Not A Will Substitute.** A will may still be necessary to, among other reasons, pass on assets not previously put into the trust, appoint an executor to administer the estate, and name a guardian for minor children.
- **Costs/Hassles.** As with any trust, there is legal fees for initial set up, and possibly ongoing trustee fees if you use an institution such as a bank. It can be costly and difficult to transfer legal title to assets such as a business, home, bank accounts and securities. Before refinancing a home, for instance, a bank may insist that the title be removed from the living trust back into one's name.
- **Another Factor.** If probate is an important concern, the need for a living trust might depend on the kinds of estate assets. Life insurance policies and pension plans can pass directly to designated beneficiaries, and assets owned jointly between spouse pass by contract or deed.
- **S Corporations.** If a corporation is an S corporation, certain legal issues must be considered. If shares are transferred into the trust, the S election may terminate if the trust isn't properly structured.

While not a panacea, revocable living trusts may be valuable in some states where probate is costly and complicated. However, since living trusts may not work to your advantage, it's best to consult a legal advisor and a financial counselor to determine whether it should be part of your estate plan.

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