

FAIR LABOR STANDARDS ACT UPDATE

In the May *VLCT News* we outlined the changes to the federal Fair Labor Standards Act (FLSA) that went into effect on August 23, 2004. Those changes were enacted in order to update and clarify “white collar” exemptions to overtime requirements and strengthen certain overtime protections.

It is essential to be aware, however, that the Vermont Department of Labor and Industry has taken the position that the old regulations will, at least for the present, be retained in our state. Rationales on its Web site (www.state.vt.labind) include:

1. The Department feels that, despite the federal revisions, it cannot make any substantive changes to Vermont rules for overtime exemptions before it undertakes the formal rulemaking process (which may require changes to Vermont law).
2. Since the state and federal rules regarding overtime have differed in some respects, most Vermont employers have had to comply with the former federal provisions anyway because they have provided greater protection than the state law.
3. If Vermont were to adopt the federal changes, additional costs could be imposed on small Vermont employers who are not covered by the federal law because they might be forced to choose between increasing the salaries of white collar employees from \$250 to \$455 per week or lose the existing overtime exemption for these employees.

The Department adds that it “will be paying close attention to the interplay between the new federal rules and our state rules and that, if serious discrepancies emerge, [it] may propose statutory or rule changes to avoid confusion.” Unless and until that occurs, the Department’s position means that for compliance purposes, Vermont employers need to be aware of the requirements of both the federal and state laws, i.e. the old and new regulations, because when such requirements differ, the one that is most advantageous to the employee is the one which must be adhered to. Please keep in mind that job title alone does not indicate one way or another whether a position is exempt or non-exempt. Each position must be evaluated based on job duties and responsibilities. If you need help analyzing positions, please contact VLCT’s Municipal Assistance Center.

- *Jill Muhr, VLCT Human Resources Administrator*

VLCT News, October 2004