

How Does “FairPay” Impact Illinois?

The ISVMA asked Bruce Stratton, ISVMA legal counsel, to review the FLSA overtime pay provisions (FairPay) and clarify how the new rules impact the status of overtime rules in Illinois. According to Bruce:

“Public Act 93-0672, which became effective on April 2, makes the “duties test” changes to the federal Fair Labor Standards Act overtime regulations **inapplicable** in Illinois. (see an abridged version of the Act in the note below)

“Prior to April 2, an employee who was properly classified as exempt from the overtime requirements of the FLSA was also exempt from Illinois’ overtime pay law. This meant that Illinois employers could decide exempt/non-exempt issues according to the single FLSA standard. We no longer have the single standard to which to refer. We now have a federal test and an Illinois test, each of which must be considered as the employer makes the determination.

“PA 93-0672 amended the Illinois Minimum Wage exemptions from the requirement that overtime pay is required for time worked in excess of 40 hours a week. The law continues to exempt from the overtime pay requirement “bona fide executive, administrative or professional” employees “as defined by or covered by the Federal Fair Labor Standards Act of 1938 and rules adopted under that Act, as both exist on March 30, 2003, but compensated at the amount of salary specified in subsections (a) and (b) of Section 541.600 of Title 29 of the Code of Federal Regulations as proposed in the Federal Register on March 31, 2003 or a greater amount of salary as may be adopted by the United States Department of Labor.” This means that as the employer is deciding the question of exempt and non-exempt it must continue to look at the duties performed by the employee as such duties were defined in the FLSA prior to the recent changes. That is to say, the recent changes in the so called “duties” test under the FLSA are NOT effective in Illinois.

“The Illinois law, however, does adopt the new higher salary thresholds under the amended FLSA, which means that employees must be paid a minimum salary of \$455 per week to even be considered as exempt.

“Illinois employers should probably review their exempt employee classifications to ensure that each exempt employee is earning the new, higher threshold salary (\$23,600 per year). They should also review their job descriptions and the duties that employees are actually performing to ensure that they are meeting the old, rather than the new FLSA duties test. If the employee meets both tests, he or she can be classified as exempt.

“In conclusion, I would also point out that the philosophy underlying the FLSA is fairly clear even if the language of the Act and the Regulations is not. The Act is intended to prevent the presumed abuse of employees that results in requiring them to work in excess of 40 hours per week without overtime compensation. We believe that the US and the Illinois Departments of Labor will look very carefully at any claimed exemption in order to determine the extent to which the duties actually performed by the employee meet the test. Calling someone an “Assistant Manager” or “Vice-President”, or some other such title in order to confer upon them the executive or administrative status will probably not work. Employers who do not wish to have an audit by the Department of Labor and who do not wish to suffer the consequences of an adverse finding, might want to consider classifying employees as non-exempt and either paying the overtime or giving time off during the same pay period so that overtime is not earned.”

Note:

Section 5. The Minimum Wage Law is amended by changing Section 4a as follows:

(820 ILCS 105/4a) (from Ch. 48, par 1004a)

Sec. 4a. (1) Except as otherwise provided in this Section, no employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours specified at a rate not less than 1 ½ times the regular rate at which he is employed.

(2) The provisions of subsection (1) of this Section are not applicable to:

.....

E. Any employee employed in a bona fide executive, administrative or professional capacity, including any radio or television announcer, news editor, or chief engineer, as defined by or covered by the Federal Fair Labor Standards Act of 1938 and the rules adopted under that Act, as both exist on March 30, 2003, but compensated at the amount of salary specified in subsections (a) and (b) of Section 541.600 of Title 29 of the Code of Federal Regulations as proposed in the Federal Register on March 31, 2003 or a greater amount of salary as may be adopted by the United States Department of Labor, as now or hereafter amended. For bona fide executive, administrative, and professional employees of not-for-profit corporations, the Director may, by regulation, adopt a weekly wage rate standard lower than that provided for executive, administrative and professional employees covered under the Fair Labor Standards Act of 1938, as now or hereafter amended.

(4) A governmental body is not in violation of subsection (1) if the governmental body provides compensatory time pursuant to paragraph (o) of Section 7 of the Federal Fair Labor Standards Act of 1938, as now or hereafter amended, or is engaged in fire protection or law enforcement activities and meets the requirements of paragraph (k) of Section 7 or paragraph (b)(20) of Section 13 of the Federal Fair Labor Standards Act of 1938, as now or hereafter amended.

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“I was sustained by one piece of inestimable good fortune. I had for a friend a man of immense and patient wisdom and a gentle but unyielding fortitude. I think that if I was not destroyed at this time by the sense of hopelessness which these gigantic labors has awakened in me, it was largely because of the courage and patience of this man. I did not give in because he would not let me give in.” – Thomas Wolfe

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It is time for the Third Annual Mentor Tailgate! Whether you are currently signed up to be a mentor or want to explore the possibility, come join the celebration at **9:00 a.m. on Saturday, September 11**. We are going to be entertained by the Marching Illini Drum Line and Horn Line and then the Fighting Illini football team will square off against UCLA at 11:00 a.m.

Please contact the Office of Academic and Student Affairs to register for the Mentor Tailgate. Reservations should be made immediately!