

## DOES DOL'S FINAL OVERTIME REGULATION STILL CONTAIN OVERTIME CUTS?

WEAKENING OF OVERTIME RULES	PROPOSED REGULATION (MARCH 2003)	FINAL REGULATION (APRIL 2004)
<b>Administrative Management</b>		
<p><u>Primary Duty</u>— Broadening definition of administrative work by requiring only that it be “related to management,” rather than “<u>directly related to management policies</u>” (Current Sections 541.2(a)(1); 541.205)</p>	<p><b>X</b></p> <p>(Proposed Sections 541.200; 541.201)</p>	
<p><u>Primary Duty</u>— Broadening definition of administrative work to automatically include any “work in areas such as tax, finance, accounting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations, and similar activities.” (No such current provision)</p>	<p><b>X</b></p> <p>(Proposed Section 541.201(b))</p>	
<p><u>Primary Duty/“Production vs. Staff Dichotomy”</u>— Broadening definition of administrative work by eliminating language requiring that such work relate to “administrative,” as opposed to “production,” operations</p>	<p><b>X</b></p>	

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<i>of a business</i> (Current Section 541.205(a) and (b))	(Proposed Section 541.201; 68 Fed. Reg. at 15566)	
<u>Primary Duty</u> —Allowing “physical and menial tasks” to count as administrative work, while eliminating requirement that administrative employees not spend “most of their time” performing non-office manual work (Current Section 541.203)	X  (Proposed Sections 541.700; 541.702; 541.703)	
<u>Primary Duty</u> —Broadening definition of administrative work to include any work that is not “completely unrelated” or only “remotely related” to other administrative work (Current Sections 541.2; 541.205)	X  (Proposed Sections 541.700; 541.702; 541.703)	
<u>Primary Duty</u> —Allowing primary duty to include following “well-defined operating policies or procedures” of employer	X  (Proposed Section 541.700)	
<u>Primary Duty</u> —Requiring that administrative work be only “a” primary duty of exempt employees, as opposed to “the” primary duty (Current Section 541.2(a))	X  (Proposed Section 541.200(a)(2))	
<u>Primary Duty</u> —Eliminating rule of thumb that primary duty must occupy 50% of exempt employee’s time (Current Sections 541.206; 541.103)	X  (Proposed Section 541.700)	
<u>Discretion and Independent Judgment</u> —Eliminating requirement that exempt employees “customarily and regularly	X	

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<i>exercise discretion and independent judgment” (Current Sections 541.2(b); 541.207)</i>	<i>(Proposed Section 541.200; 68 Fed. Reg. at 15566)</i>	
<i><u>Highly Compensated Employees</u>—Eliminating one of two duty requirements (“primary duty” or “position of responsibility”) for employees who earn at least \$65,000 and perform any amount of office or non-manual work</i>	<b>X</b>  <i>(Proposed Section 541.601)</i>	
<i><u>Highly Compensated Employees</u>—Eliminating salary basis requirement for “highly compensated employees” earning at least \$65,000 total compensation per year</i>	<b>X</b>  <i>(Proposed Section 541.601)</i>	
<i><u>Stricter “Long” Duties Test</u>—Entirely eliminating stricter criteria for middle-income employees and replacing with more relaxed test</i>	<b>X</b>  <i>(68 Fed. Reg. at 15566)</i>	
<i>--Eliminating “long” duties test requirement that exempt employees regularly and directly assist proprietor or executive, or perform work of specialized knowledge under only general supervision, or execute special assignments under only general supervision (Current Section 541.2 ©)</i>	<b>X</b>  <i>(68 Fed. Reg. at 15566)</i>	
<i>--Eliminating “long” duties test requirement that exempt employees must not spend more than 20% of time doing non-exempt</i>	<b>X</b>	

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<i>Work</i> (Current Sections 541.2(d); 541.209)	(68 Fed. Reg. at 15566)	
<u>Salary Basis</u> —Allowing employers to treat exempt salaried employees like non-exempt hourly employees for purposes of disciplinary pay deductions, but without paying them for overtime (Current Section 541.212)	<b>X</b>  (Proposed Section 541.602)	
<u>Salary Basis</u> —Shielding from overtime liability, in certain circumstances, employers who improperly treat exempt salaried employees like non-exempt hourly employees (without paying them for overtime) (Current Section 541.212)	<b>X</b>  (Proposed Section 541.603)	
<b>Executive Management</b>		
<u>Primary Duty</u> —Broadening definition of management work to include employee appraisals not used for promotions (Current Section 541.102(b))	<b>X</b>  (Proposed Section 541.103)	
<u>Primary Duty</u> —Broadening definition of management work by eliminating language requiring that exempt employees “must be in charge” of a department or subdivision and not merely “participate in the management” thereof (Current Section 541.104(a))	<b>X</b>  (Proposed Section 541.104(a))	
<u>Primary Duty</u> —Broadening definition of management work to include any work that is	<b>X</b>	

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<i>not “completely unrelated” or only “remotely related” to other management work (Current Sections 541.1; 541.102)</i>	<i>(Proposed Sections 541.700; 541.702; 541.703; see also Section 541.106)</i>	
<i><u>Primary Duty</u>—Allowing primary duty to include following “well-defined operating policies or procedures” of employer</i>	<b>X</b> <i>(Proposed Section 541.700)</i>	
<i><u>Primary Duty</u>—Changing pertinent factor for determining primary duty from “freedom from supervision” to “freedom from direct supervision” (Current Section 541.103)</i>	<b>X</b> <i>(Proposed Section 541.700)</i>	
<i><u>Primary Duty</u>—Requiring that management work be only “a” primary duty of exempt employees, as opposed to “the” primary duty (Current Section 541.1(a))</i>	<b>X</b> <i>(Proposed Section 541.100)</i>	
<i><u>Primary Duty</u>—Eliminating rule of thumb that primary duty must occupy 50% of exempt employee’s time (Current Section 541.103)</i>	<b>X</b> <i>(Proposed Section 541.700)</i>	
<i><u>Primary Duty/Retail Establishments</u>—Specifically providing that retail supervisors need not spend 50% of their time on exempt work</i>	<b>X</b> <i>(Proposed Sections 541.107; 541.702; 541.703)</i>	
<i><u>“Sole Charge” Employees</u>—Eliminating requirement that management be the primary duty of exempt “sole charge” employees (Current Section 541.1; 541.113)</i>	<b>X</b> <i>(Proposed Section 541.102)</i>	
<i><u>“Sole Charge” Employees</u>—Eliminating</i>		

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<p><i>requirement that exempt “sole charge” employees customarily and regularly direct the work of at least two other employees</i>  <i>(Current Section 541.1; 541.113)</i></p>	<p style="text-align: center;"><b>X</b></p> <p style="text-align: center;"><i>(Proposed Section 541.102)</i></p>	
<p><u>“Sole Charge” Employees</u>—<i>Eliminating language providing that “sole charge” status can be lost if management decisions are reserved for occasional visits by supervisor</i> <i>(Current Section 541.113(d))</i></p>	<p style="text-align: center;"><b>X</b></p> <p style="text-align: center;"><i>(Proposed Section 541.102(b))</i></p>	
<p><u>20 Percent Owners</u>—<i>Eliminating requirement that the primary duty of exempt 20% owners be management</i> <i>(Current Sections 541.1(a); 541.114)</i></p>	<p style="text-align: center;"><b>X</b></p> <p style="text-align: center;"><i>(Proposed Section 541.101; 68 Fed. Reg. at 15565)</i></p>	
<p><u>20 Percent Owners</u>—<i>Eliminating requirement that exempt 20% owners direct the work of at least two other employees</i> <i>(Current Sections 541.1(b); 541.114)</i></p>	<p style="text-align: center;"><b>X</b></p> <p style="text-align: center;"><i>(Proposed Section 541.101; 68 Fed. Reg. at 15565)</i></p>	
<p><u>20 Percent Owners</u>—<i>Eliminating minimum salary requirement for exempt 20% owners</i> <i>(Current Sections 541.1(f); 541.114)</i></p>	<p style="text-align: center;"><b>X</b></p> <p style="text-align: center;"><i>(Proposed Section 541.101; 68 Fed. Reg. at 15565)</i></p>	
<p><u>20 Percent Owners</u>—<i>Eliminating salary basis requirement for exempt 20% owners</i> <i>(Current Sections 541.1(f); 541.114)</i></p>	<p style="text-align: center;"><b>X</b></p> <p style="text-align: center;"><i>(Proposed Section 541.101; 68 Fed. Reg. at 15565)</i></p>	
<p><u>Highly Compensated Employees</u>—<i>Eliminating two of three duty requirements for employees who earn at least \$65,000 and perform any amount of office or non-manual work</i></p>	<p style="text-align: center;"><b>X</b></p> <p style="text-align: center;"><i>(Proposed Section 541.601)</i></p>	

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<i>Highly Compensated Employees—Eliminating salary basis requirement for “highly compensated employees” earning at least \$65,000 total compensation per year</i>	<b>X</b>  <i>(Proposed Section 541.601)</i>	
<i>Stricter “Long” Duties Test—Entirely eliminating stricter criteria for middle-income employees and replacing with more relaxed test</i>	<b>X</b>  <i>(68 Fed. Reg. at 15564)</i>	
<i>--Eliminating “long” duties test requirement that exempt employees must not spend more than 20% of time doing non-exempt work (40% in retail and service) (Current Sections 541.1(e); 541.112)</i>	<b>X</b>  <i>(68 Fed. Reg at 15564)</i>	
<i>—Eliminating “long” duties test requirement that exempt employee must “customarily and regularly exercise discretionary powers” (Current Sections 541.1(d); 541.107)</i>	<b>X</b>  <i>(68 Fed. Reg. at 15564)</i>	
<i>—Replacing “long” duties test requirement that, at minimum, special weight must be given to employee’s recommendations on entire spectrum of employment status issues, with a requirement that special weight must be given to recommendations on <u>any</u> change of status (Current Sections 541.1©; 541.106)</i>	<b>X</b>  <i>(Proposed Section 541.100(a)(4))</i>	
<i>Salary Basis—Allowing employers to treat</i>		

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<i>exempt salaried employees like non-exempt hourly employees for purposes of disciplinary pay deductions, but without paying them for overtime</i> <small>(Current Section 541.118)</small>	<b>X</b>  <small>(Proposed Section 541.602)</small>	
<i>Salary Basis—Shielding from overtime liability, in certain circumstances, employers who improperly treat exempt salaried employees like non-exempt hourly employees (without paying them for overtime)</i> <small>(Current Section 541.118)</small>	<b>X</b>  <small>(Proposed Section 541.603)</small>	
<b>Learned Professionals</b>		
<i>Primary Duty—Broadening definition of professional work to include any work that is not “completely unrelated” or only “remotely related” to other professional work</i> <small>(Current Sections 541.3; 541.301)</small>	<b>X</b>  <small>(Proposed Sections 541.700; 541.702; 541.703)</small>	
<i>Primary Duty—Allowing primary duty to include following “well-defined operating policies or procedures” of employer</i>	<b>X</b>  <small>(Proposed Section 541.700)</small>	
<i>Primary Duty—Requiring that professional work be only “a” primary duty of exempt employees, as opposed to “the” primary duty</i> <small>(Current Section 541.3(a))</small>	<b>X</b>  <small>(Proposed Section 541.300)</small>	
<i>Primary Duty—Eliminating rule of thumb that primary duty must occupy 50% of exempt employee’s time</i> <small>(Current</small>	<b>X</b>	

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<i>Sections 541.304; 541.103)</i>	<i>(Proposed Section 541.700)</i>	
<u>Discretion and Judgment</u> —Eliminating requirement that exempt employee must “consistently exercise discretion and judgment” <i>(Current Sections 541.3(b); 541.305)</i>	<b>X</b>  <i>(Proposed Section 541.300; 68 Fed. Reg. at 15567)</i>	
<u>Alternative Knowledge</u> —Weakening educational requirements by substituting “work experience” for standard requirement of professional degree	<b>X</b>  <i>(Proposed Section 541.300-301; 68 Fed. Reg. at 15567-15568)</i>	
<u>Alternative Knowledge</u> —Weakening educational requirements by substituting “training in the armed forces” for standard requirement of professional degree	<b>X</b>  <i>(Proposed Section 541.301(d); 68 Fed. Reg. at 15567-8)</i>	
<u>Stricter “Long” Duties Test</u> —Entirely eliminating stricter criteria for middle-income employees and replacing with more relaxed test	<b>X</b>  <i>(68 Fed. Reg. at 15567)</i>	
--Eliminating “long” duties test requirement that exempt work must be “predominantly intellectual” and “cannot be standardized” <i>(Current Sections 541.3(c); 541.306)</i>	<b>X</b>  <i>(68 Fed. Reg. at 15567)</i>	
--Eliminating “long” duties test requirement that exempt employees must not spend more than 20% of time doing non-exempt work <i>(Current Sections 541.3(d); 541.309)</i>	<b>X</b>  <i>(68 Fed. Reg. at 15567)</i>	
<u>Salary Basis</u> —Eliminating salary basis requirement		

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<i>for “highly compensated employees” earning more than \$65,000 total compensation per year</i>	<b>X</b>  <i>(Proposed Section 541.601)</i>	
<i><u>Salary Basis</u>—Allowing employers to treat exempt salaried employees like non-exempt hourly employees for purposes of disciplinary pay deductions, but without paying them for overtime <i>(Current Section 541.312)</i></i>	<b>X</b>  <i>(Proposed Section 541.602)</i>	
<i><u>Salary Basis</u>—Shielding from overtime liability, in certain circumstances, employers who improperly treat exempt salaried employees like non-exempt hourly employees (without paying them for overtime) <i>(Current Section 541.312)</i></i>	<b>X</b>  <i>(Proposed Section 541.603)</i>	
<b>Artistic Professionals</b>		
<i><u>Primary Duty</u>—Broadening definition of artistic professional work to include any “work in a recognized field of creative endeavor” (and renaming the exemption “creative professionals”) <i>(Current Section 541.3; 541.302)</i></i>	<b>X</b>  <i>(Proposed Section 541.302)</i>	
<i><u>Primary Duty</u>—Broadening definition of artistic professional work to include any “work requiring originality”</i>	<b>X</b>  <i>(Proposed Section 541.302)</i>	
<i><u>Primary Duty</u>—Broadening definition of artistic professional work to include any work that is not “completely</i>		

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<i>unrelated” or only “remotely related” to other creative professional work (Current Sections 541.3; 541.302)</i>	<b>X</b>  <i>(Proposed Sections 541.700; 541.702; 541.703)</i>	
<i><u>Primary Duty</u>—Allowing primary duty to include following “well-defined operating policies or procedures” of employer</i>	<b>X</b>  <i>(Proposed Section 541.700)</i>	
<i><u>Primary Duty</u>—Requiring that creative professional work be only “a” primary duty of exempt employees, as opposed to “the” primary duty (Current Section 541.3(a))</i>	<b>X</b>  <i>(Proposed Section 541.302)</i>	
<i><u>Primary Duty</u>—Eliminating rule of thumb that primary duty must occupy 50% of exempt employee’s time (Current Section 541.304; 541.103)</i>	<b>X</b>  <i>(Proposed Section 541.700)</i>	
<i><u>Journalists</u>—Reversing presumption explicit in current regulations that journalists are generally not exempt (Current Sections 541.302(d); 541.302(f))</i>	<b>X</b>  <i>(Proposed Section 541.302(d))</i>	
<i><u>Stricter “Long” Duties Test</u>—Entirely eliminating stricter criteria for middle-income employees and replacing with more relaxed test</i>	<b>X</b>  <i>(68 Fed. Reg. 15567-15568)</i>	
<i>--Eliminating “long” duties test requirement that professional work be “predominantly intellectual” work that “cannot be standardized” (Current Sections 541.3(c); 541.306)</i>	<b>X</b>  <i>(68 Fed. Reg. 15567-15568)</i>	
<i>--Eliminating “long” duties test requirement that professional employees</i>		

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<i>not spend more than 20% of their time doing non-exempt work (Current Sections 541.3(d); 541.309)</i>	<b>X</b>  <i>(68 Fed. Reg. 15567-15568)</i>	
<i>--Eliminating "long" duties test requirement that professional employees "consistently exercise discretion and judgment" (Current Sections 541.3(b); 541.305)</i>	<b>X</b>  <i>(68 Fed. Reg. 15567-15568)</i>	
<i><u>Salary Basis</u>—Eliminating salary basis requirement for "highly compensated employees" earning more than \$65,000 total compensation per year</i>	<b>X</b>  <i>(Proposed Section 541.601)</i>	
<i><u>Salary Basis</u>—Allowing employers to treat exempt salaried employees like non-exempt hourly employees for purposes of disciplinary pay deductions, but without paying them for overtime (Current Section 541.312)</i>	<b>X</b>  <i>(Proposed Section 541.602)</i>	
<i><u>Salary Basis</u>—Shielding from overtime liability, in certain circumstances, employers who improperly treat exempt salaried employees like non-exempt hourly employees (without paying them for overtime) (Current Section 541.312)</i>	<b>X</b>  <i>(Proposed Section 541.603)</i>	
<b>Computer Professionals</b>		
<i><u>Computer Employees</u>—Broadening definition of computer professionals by removing limitation to the software field (Current Section 541.303(a))</i>	<b>X</b>  <i>(Proposed Section 541.400(a))</i>	
<i><u>Primary Duty</u>—</i>		

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<i>Broadening definition of exempt computer work to include any work that is not “completely unrelated” or only “remotely related” to other computer work (Current Sections 541.303)</i>	<b>X</b>  <i>(Proposed Sections 541.700; 541.702; 541.703)</i>	
<i><u>Primary Duty</u>—Allowing primary duty to include following “well-defined operating policies or procedures” of employer</i>	<b>X</b>  <i>(Proposed Section 541.700)</i>	
<i><u>Primary Duty</u>—Requiring that professional work be only “a” primary duty of exempt employees, as opposed to “the” primary duty (Current Section 541.3(a))</i>	<b>X</b>  <i>(Proposed Section 541.400)</i>	
<i><u>Primary Duty</u>—Eliminating rule of thumb that primary duty must occupy 50% of exempt employee’s time (Current Section 541.304; 541.103)</i>	<b>X</b>  <i>(Proposed Section 541.700)</i>	
<i><u>Discretion and Judgment</u>—Eliminating requirement that exempt employees “consistently exercise discretion and judgment” (Current Section 541.3(b); 541.305)</i>	<b>X</b>  <i>(68 Fed. Reg. at 15568-15569)</i>	
<i><u>Stricter “Long” Duties Test</u>—Entirely eliminating stricter criteria for middle-income employees and replacing with more relaxed test</i>	<b>X</b>  <i>(68 Fed. Reg. at 15568-15569)</i>	
<i>--Eliminating “long” duties test requirement that professional work must be “predominantly intellectual” and “cannot be standardized” (Current</i>	<b>X</b>	

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<i>Section 541.3©; 541.306)</i>	<i>(68 Fed. Reg. at 15568-15569)</i>	
<i>--Eliminating "long" duties test requirement that exempt employees must not spend more than 20% of time doing work not directly and closely related to exempt work (Current Section 541.3(d); 541.309)</i>	<b>X</b>  <i>(68 Fed. Reg. at 15568-15569)</i>	
<i><u>Salary Basis</u>—Allowing employers to treat exempt salaried employees like non-exempt hourly employees for purposes of disciplinary pay deductions, but without paying them for overtime (Current Section 541.312)</i>	<b>X</b>  <i>(Proposed Section 541.602)</i>	
<i><u>Salary Basis</u>—Shielding from overtime liability, in certain circumstances, employers who improperly treat exempt salaried employees like non-exempt hourly employees (without paying them for overtime) (Current Section 541.312)</i>	<b>X</b>  <i>(Proposed Section 541.603)</i>	
<b>Highly Compensated Employees</b>		
<i>Newly exempting employees who earn \$65,000, do any amount of office or non-manual work, and perform "work of substantial importance"</i>	<b>X</b>  <i>(Proposed Section 541.601)</i>	
<i>Newly exempting employees who earn \$65,000, do any amount of office or non-manual work, and perform "work requiring a high level of skill or training"</i>	<b>X</b>  <i>(Proposed Section 541.601)</i>	

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<i>Newly exempting employees who earn \$65,000 and have “a” primary duty of office or non-manual work related to management or business operations</i>	<p><b>X</b></p> <p><i>(Proposed Section 541.601)</i></p>	
<i>Newly exempting employees who earn \$65,000, do any amount of office or non-manual work, and whose recommendations on <u>any</u> change of status of co-workers are given “particular weight”</i>	<p><b>X</b></p> <p><i>(Proposed Section 541.601)</i></p>	
<i>Newly exempting employees who earn \$65,000, do any amount of office or non-manual work, and customarily direct the work of at least two other employees</i>	<p><b>X</b></p> <p><i>(Proposed Section 541.601)</i></p>	
<i>Newly exempting employees who earn \$65,000, do any amount of office or non-manual work, and have “a” primary duty of management (including employee appraisals not used for promotion)</i>	<p><b>X</b></p> <p><i>(Proposed Section 541.601)</i></p>	
<b>Outside Sales Employees</b>		
<i><u>Primary Duty</u>—Requiring only that exempt employees have “a” primary duty of outside sales work, rather than that they be employed “for the purpose of” outside sales and solicitations (Current Section 541.5(a))</i>	<p><b>X</b></p> <p><i>(Proposed Section 541.500; 68 Fed. Reg. at 15569)</i></p>	

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<p><u>20 Percent Tolerance Test</u>—Eliminating requirement that exempt employees devote no more than 20% of their time to work other than outside sales and solicitations (Current Section 541.5(b))</p>	<p style="text-align: center;"><b>X</b></p> <p style="text-align: center;"><i>(Proposed Section 541.500; 68 Fed. Reg. at 15569)</i></p>	
<p><u>Drivers Who Sell</u>—Eliminating detailed discussion that makes clear drivers who sell are not exempt unless they are salesmen by occupation (Current Section 541.505)</p>	<p style="text-align: center;"><b>X</b></p> <p style="text-align: center;"><i>(Proposed Section 541.504)</i></p>	
<p><u>Service Employees</u>—Eliminating language that makes clear employees who sell services they perform themselves are not exempt (Current Sections 541.501(d); 541.501(e))</p>	<p style="text-align: center;"><b>X</b></p> <p style="text-align: center;"><i>(Proposed Section 541.501(d))</i></p>	