

# 2016 HOSPITALITY LAW CONFERENCE

FEBRUARY 22-24, 2016,

## THE USDOL'S NEW REGULATIONS ON OVERTIME

Presented by:

Andria L. Ryan



# PRESENTER

Andria L. Ryan

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Ms. Ryan represents hospitality employers throughout the U.S. in various phases of labor and employment law. She spends much of her time counseling employers in day-to-day employment and labor decisions and educating employers about prevention and practical solutions to workplace problems. Ms. Ryan is a guest lecturer at the Georgia State University Hospitality School and Johnson and Wales University on employment law topics. Ms. Ryan serves as an active member on the AH&LA's Human Resources Committee, the Resort Employee Relations Group and the Advisory Board of Hospitality Law.



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# A BRIEF HISTORY

The FLSA was enacted in 1938

- The law specifically delegates authority to define the “white collar” exemptions to the United States Department of Labor
- The DOL revised definitions of the “white collar” exemptions in 1940, 1949, 1958, 1963, 1970, 1975, and 2004
- In March 2014, the President directed DOL to again “modernize and streamline” its regulations governing “white collar” exemptions

# THE BASICS – “WHITE COLLAR” EXEMPTIONS

## Executive:


- Management of the organization or unit or subdivision;
- Supervises at least two other FT employees or the equivalent; hires/fires, or makes suggestions

## Administrative:

- Office/non-manual work directly related to management or general business operations;
- Work includes discretion and independent judgment in "matters of significance."

# THE BASICS – “WHITE COLLAR” EXEMPTIONS

## Professional:


- "Learned": primary duty is work requiring advanced knowledge in a field of science or learning, usually gained through prolonged instruction and study;
  - work is mainly intellectual, includes consistent judgment and discretion.
  - "Creative": primary duty is work requiring invention, imagination, originality, or talent.
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# SALARY REQUIREMENT

- All “White Collar” exemptions require the employee be paid on a “salary basis” or “fee basis” of least \$455 per week.
- *DOL’s regulations propose to **double** the salary level:*
  - Proposed salary level would be 40% of earnings for full-time salaried workers
  - This is projected to be \$970 per week (\$50,440 annually) in 2016
  - Annual (and automatic) updates in salary level to maintain 40% threshold

# WHAT HASN'T CHANGED?

The status of any employee who is exempt pursuant to a non “white collar” exemption (e.g., outside sales, 7(i))

- The status of certain employees exempt pursuant to a “white collar” exemption (e.g., computer professionals, doctors, lawyers, teachers)
  - The requirement to pay a minimum salary (for now)
  - The requirement to perform certain exempt duties (for now)
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# WHAT'S NEXT?


The proposed regulations are NOT final

- DOL received over 250,000 comments from the public –in the hopes of influencing DOL's final regulations
- DOL will issue final regulations with a prospective effective date
  - Speculation about the announcement date ranges from April to late summer 2016


# COMMENTS TO DOL

Large number of comments from hospitality industry – including from AH&LA

Comments addressed:

- Phase in over time
  - Adjustments to salary level for different regions of country
  - Negative effect on management training and development
  - Increase in bonus/commission amount towards salary
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# YOUR ACTION PLAN

- Remember, there is still time to prepare
  - Review all exempt employees with a salary of less than \$50,440
  - Evaluate whether other non -“white collar” exemptions are available
  - Prepare to modify the pay of those employees who will no longer be exempt
  - Develop a communication plan
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**Thank You!**

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