



**PIMA COUNTY, ARIZONA**  
**BOARD OF SUPERVISORS POLICY**

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Background

It is the policy of the Board of Supervisors that all of its managers and supervisors are versed in the requirements of the Fair Labor Standards Act (FLSA). Further, it is the policy of Pima County to adopt and to be in total compliance with the new white-collar exemptions to the overtime rules regulated by the Department of Labor under the FLSA. Effective August 23, 2004, the U.S. Department of Labor enacted final regulations, the first substantial update to the regulations since 1975, referred to as the FairPay regulations. These regulations primarily redefine the test for “exempt” and “nonexempt” employees and affect only “white-collar” workers.

Responsibility

The Human Resources Department has the sole responsibility for classifying employees under the Fair Labor Standards Act and for performing audits on behalf of departments and their employees. Managers and supervisors are expected to know about and comply with the regulations. When a department has a question about an employee’s exempt or nonexempt status and the department’s obligation to the employee, the department must check with Human Resources for proper guidance. If necessary, Human Resources will obtain a legal opinion from the Office of the County Attorney.

Human Resources will make final decisions about how to classify an employee by applying the FLSA salary level and basis requirement (salary) test and the job duties (duties) test. Please keep in mind that a title, job description or classification specification is of little use in determining whether an employee is exempt or nonexempt. What counts are the actual activities or day-to-day work duties of any given job that bring it within the exemption. If the department feels that an employee is not properly classified as exempt or nonexempt, the department must contact the Human Resources Department. The Human Resources Department will conduct the necessary audit, will report back to the department in a timely fashion, and will change the classification based on the results of the tests, if necessary.

This policy will be used in conjunction with the Merit System Rules and Personnel Policies and other related Board of Supervisors policies.

A. Requirements

Pursuant to the FLSA, employees must be classified as either exempt or nonexempt from the FLSA overtime requirements. That is an employee is either covered by the requirements for overtime, or is not covered by those requirements. Those who are covered must be paid at least the federal minimum wage for all hours worked. Next, nonexempt employees must be compensated at one and one-half times their normal hourly rate of pay for all hours worked in excess of 40 hours in a single workweek. In lieu of overtime pay, the public employee may receive compensatory time at a rate of one and one-half times the hours worked in excess of 40 hours in a single workweek. The policy of Pima County is

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to allow Appointing Authorities to determine whether to pay overtime or to give compensatory time for overtime hours worked.

B. Exceptions to the Overtime Pay Requirements

Exceptions to the overtime pay requirement are referred to as the white-collar exemptions. An exempt employee must be classified as Executive (E), Administrative (A), Professional (P) and a special test exists for those in Computer Software. The salary and duties tests required for an employee to be classified in any of these categories as exempt from the requirements of the FLSA must be met in each and every individual instance.

Also, pursuant to the FLSA, those classified as executive, administrative or professional may receive, under certain circumstances, overtime pay or compensatory time without destroying their exempt status. Only the Board of Supervisors has the authority to grant exempt employees the ability to receive overtime pay or compensatory time by classifying these employees as nonexempt for the purpose of receiving overtime pay. The Board of Supervisors will approve this action only in rare instances. A justification for doing so must be submitted to Human Resources and authorized by the County Administrator for submission to the Board of Supervisors for final discussion and review. At the discretion of the County Administrator, this request will not be considered if it has an adverse budgetary impact and may require a compensatory analysis and adjustment to salary and/or the salary range.

C. Major Impact of FairPay Regulations

1. The new regulations affect only “white collar” workers and do not apply to blue-collar workers who perform work involving repetitive operations with their hands, physical skill, and energy. The latter workers will still qualify to receive overtime pay. The new regulations also do not apply to police officers, fire fighters, EMT deputies and other similar jobs.
2. Under the new regulations, workers earning less than \$23,660 per year – or \$455 per week – are guaranteed overtime protection. That means if you have an employee who makes less than \$23,660, no matter what his or her duties are, he/she is guaranteed to be paid overtime for hours worked over 40 hours a week.
3. Under the FairPay regulations, salaried employees can now be suspended without pay in full-day increments without destroying their exemption from the overtime requirements. However, exempt employees may only be suspended for infractions of “workplace conduct” rules that apply to all employees. For purposes of suspension of white-collar workers, workplace misconduct is defined very narrowly and is limited to serious misconduct like sexual harassment, violence, drug and alcohol violations, or violations of state and local laws.

Example: an exempt employee threatens a co-worker and actually physically assaults the co-worker. The incident is reported by the department in compliance with the County’s workplace violence policy prohibiting such action. This results in the exempt employee being suspended for three days without pay. Under the new FairPay regulations, this is acceptable.

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D. Allowable Reductions from an Exempt Employee's Salary

1. An exempt employee's salary may be reduced under certain circumstances. Also, requiring employees to use accrued leave, such as vacation, sick or administrative leave is not a salary deduction and is therefore allowable. Generally, if an employee is voluntarily absent from work, an employer may lawfully make deductions from the employee's salary. Also, if an employee does not provide any work in a workweek, the employee generally does not need to be paid for that work period. Permissible deductions include:

- Deductions for absences of a day or more for personal leave and for sickness or disability. (Also, see public agency exemption below.)
- Deductions for budget-related furloughs.
- Deductions made in good faith as penalties for violations of safety rules of major significance. The deductions may be made in any amount, except Pima County requires deductions to be made in full day increments for these violations.
- Deductions made in full day increments and in good faith for infractions of workplace conduct rules. The discipline and deductions must be based on a written policy that is applied uniformly to all employees and must be made for a full day or more.
- The new FLSA regulations provide that if an exempt employee uses Family and Medical Leave Act (FMLA) leave to take off part of a day or part of a workweek, the employer may reduce the exempt employee's pay by the amount of time taken off without violating the salary basis test.

2. Public Accountability Exception

The rule that an employer cannot make deductions from the salary of an exempt employee who is only absent for a part of the day is a rule in the private sector and does not apply to the public sector. The amended regulations retain the public accountability exception, and Pima County will follow the public accountability exception and allow deductions from the salary of employees for voluntary "partial day" absences. The pay is allowed to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of an illness or injury of less than one work day (or more) when accrued leave is not used by an employee because:

- Permission for its use has not been sought or has been sought and denied;
- Accrued leave has been exhausted; or
- The employee chooses to use leave without pay.

E. Nonallowable Reductions in an Exempt Employee's Salary

An employee's salary cannot be docked for jury duty, attendance as a witness, or temporary military leave. However, Pima County may offset any amounts received by an employee as jury fees, witness fees, or military pay against the salary due for that particular workweek without loss of the exemption.

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F. New Changes to the White-Collar Employees

- No more straw bosses. The old regulations identified obsolete occupations such as straw bosses, legmen, and keypunch operators. These job classifications have been removed from the regulations.
- Highly compensated workers can be denied overtime. Employees who make at least \$100,000 a year, perform office or nonmanual work, and perform one or more exempt duties do not have to be paid overtime.
- A line is drawn between white and blue collars. The new regulations specifically list over 800 blue-collar occupations that are not covered by the exemptions to help an employer to make a determination.

G. A Safe Harbor

The new FairPay regulations narrow, and therefore lessen, employer liability for improper deductions. In doing so, they put a high burden on supervisors and managers. Previously, if an improper deduction were made, other employees in that job classification would lose their exempt status as well – even if they were in another location and reported to a different manager and their pay had never been docked. Now, if a manager makes an impermissible deduction, the only employees who may lose their exempt status are those that were in the same job classification and worked for the same manager during the same period of time. Further, the new regulations provide that the exemption will only be lost if there is a “pattern and practice of improper deductions.”

H. Salary Level and Basis Requirement Test

The salary test is two-pronged and both prongs must be met. Prong 1, referred to as the standard test, requires exempt employees to receive a salary of \$455 per week. Prong 2 requires that the employee be paid on a salary basis by receiving “a predetermined amount of salary, on a weekly or less frequent basis, that is not subjected to reduction because of variations in the quality and quantity of work.”

I. Job Duties Test

The new Job Duties test eliminates the short and long tests, and concentrates on the duties actually performed which must include, in general, the exercise of independent judgment, the supervision of other employees, or require special education or expertise. The duties test must also be met as follows:

1. Executive Duties

The new regulations require that an exempt employee classified as “executive”:

- Has a primary duty to manage the enterprise or a recognized department or subdivision;
- Customarily and regularly directs the work of two or more other employees; and
- Has authority to hire or fire other employees (or whose recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight.)

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## 2. Administrative Duties

The new regulations require that an exempt employee classified as “administrative”:

- Has a primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- Holds a “position of responsibility” with the employer, defined as either (i) performing work of substantial importance or (ii) performing work requiring a high level of skill or training.

## 3. Professional Duties

The new regulations require that an exempt employee classified as “professional”:

- For learned professionals, have a primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and work experience. (There is no salary requirement for physicians and other medical practitioners or lawyers.)
- For creative professionals, have a primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

## 4. Computer Employees

The new regulations require that an employee classified as exempt as a computer software employee:

- Has (1) a primary duty of (i) application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional applications; or (ii) design, development, documentation, analysis, creation, testing, or modification of computer systems and programs, including prototypes, based on and related to user or system design specifications; or (iii) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (iv) a combination of duties described in (i), (ii), and (iii), the performance of which requires the same level of skills; and (2) employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.

### Effective Date

This policy is effective retroactively to August 23, 2004 to coincide with the effective date for the new FairPay regulations.

References: Public Safety Law Update  
29 CFR §514  
Fair Labor Standards Act  
Merit System Rules and Personnel Policies

Adopted by the Board of Supervisors: September 7,

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