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The NOHRE REPORT

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FLSA White Collar Rules Effective Soon

The U.S. Department of Labor recently announced the first comprehensive overhaul of FLSA in more than 50 years. Virtually all employers need to review existing job classifications and salary levels to ensure compliance with the revised rules.

The revised regulations are on track to take effect on August 23rd, and employers and their human resource representatives are required to be in compliance with these regulations by that date.

Their most significant compliance issues involve categorizing current jobs and interpreting the new rules. Many employers feel their biggest challenge is that existing job documentation is old, incorrect, or inconsistent. Others feel their primary issue is with understanding the new rules.

Organizations have to ensure that they properly classify positions by employees, examine variations in job duties by department and clarify overly generic job titles.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees.

To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an

exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

An employer who fails to satisfy the due diligence requirements for position review, will likely be considered as having made a "willful" violation of the FLSA in the event of a subsequent DOL audit or examination. Employers are exposed to substantial penalties for willful violations.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and

*Duties tests continued on page 4 of
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Tax Audits

IRS will audit hundreds of thousands of individual tax returns this year. Although that represents but a small percentage of all returns filed, this is little consolation if your return is among those selected for audit. But with proper preparation and planning, you should fare well.

The purpose of the audit is to verify items reported on a tax return. The easiest way to survive a tax audit is to prepare for one in advance. On an ongoing basis you should systematically maintain documentation—invoices, bills, cancelled checks, receipts or other proof—for all items to be reported on your tax return. Keep all your records in one place and hold on to your calculations.

The government normally has three years within which to conduct an audit, and often the audit won't begin until a year or more after you file your return. So don't trust your memory.

The scope of an audit depends on the complexity of the return being examined. A return reflecting business or real estate income and expenses is likely to take longer to audit than a return reflecting only salary income. You can facilitate matters by having the necessary records arranged in an orderly and systematic fashion for presentation to the IRS agent. The typical IRS agent is experienced and knows his job. Trying to outsmart the agent or sidestepping questions is likely to create friction and raise suspicions in the agent's mind.

Representation - Even if you prepared your own return, it is often advisable to have a tax professional represent you at an audit. Your representative knows what issues the IRS agent is likely to focus on and can prepare accordingly. More importantly, a tax professional knows that in many instances IRS agents will take a position (for example, to disallow deduction of a certain type of expense) even though courts and other authorities have expressed a contrary opinion on the issue. Because the representative knows and can point to the proper authority, the IRS agent may be forced to throw in the towel.

Our office stands ready to assist you with your audit and recordkeeping. Please call Marty Goss @ 833-6744 or toll free @ 800-785-8659 to set up an appointment to discuss this or any other aspect of your taxes.

Time is Running Out For Exchanging EE/E Savings Bonds

Current holders of Series EE/E savings bonds will no longer be able to exchange them for HH bonds after August 31, 2004 when the U.S. Treasury will cease issuing HH bonds. This means that holders of EE/E bonds will lose the opportunity to defer reporting interest on their EE/E bonds by exchanging them for HH bonds. Such exchanges can permit tax deferral on accrued interest to continue for another 20 years after the exchange.

Series E bonds issued in May 1941 through November 1965 stop earning interest 40 years from the date of issue. Series EE/E bonds issued in December 1965 and later stop earning interest 30 years from the date of issue.

Series HH bonds cannot be purchased for cash. They can be acquired only in exchange for Series EE/E bonds or upon reinvestment of the proceeds of matured Series H bonds.

Until August 31, 2004 the owner, co-owner, or surviving beneficiary of Series EE/E bonds can exchange them for Series HH bonds. The bonds to be exchanged must be:

1. at least 12 months old;
2. must be worth at least \$500 (combined value); and
3. cannot have been matured for longer than one year.

When you convert EE/E bonds to HH bonds, you postpone federal taxes on the deferred EE/E bond interest for another 20 years. Otherwise, you owe income tax when you redeem the bonds (or they reach final maturity). After you have held the HH bonds for six months, you can sell them if you wish, possibly over several years. You may be able to achieve tax savings from your ability to control the timing of income.

The interest rate on new HH bonds is 1.5 percent. If the interest rate on your existing EE/E bonds is significantly higher than this, then deferral may not be appropriate.

Additional information about savings bonds and other U.S. Treasury securities is available on the Internet at www.treasurydirect.gov. If you would like to discuss whether exchanging EE/E bonds is right for you, please contact your account manager.

Five Rules to Detect and Avoid Phishing Scams

One of the more sinister and increasingly prevalent methods of identity theft is the practice of "spoofing" or "phishing," involving the sending of e-mails that mirror the appearance of a popular Web site or company in an attempt to commit identity theft. Phisher e-mails claim to be sent by a legitimate company and ask consumers to reply with personal information, such as their credit card number, social security number and account password.

In June 2004, TRUSTe, a not-for-profit privacy organization revealed that 76 percent of consumers consider identity theft their number one privacy concern.

In response to the sharp increase in e-mail phishing, TRUSTe released the following five rules to help consumers detect and avoid phishing scams:

1. **Be suspicious of urgent demands for information.** Often, phished e-mails will make some urgent request. For example, the e-mail will claim that your account will be terminated if you fail to confirm your personal information.
2. **Look for misspelled words or grammatical errors in the message and/or hyperlink.** Blatant misspelled words and/or grammatical errors are common in e-mail scams.
3. **Avoid e-mailing personal and financial information.** Before submitting financial or account information to a Web site, look for a third-party privacy seal to ensure that the transaction is secure. Avoid volunteering private information like passwords or social security numbers.
4. **Be watchful of general greetings.** Many phished e-mails begin with a general greeting rather than directly addressing the person by name.
5. **Contact the company directly.** If you have any doubts about an e-mail or Web site, don't be afraid to contact their customer service.

In addition, if you purchase items online, only make purchases from companies that take identity threats seriously. Identity thieves are always looking for new ways to get your personal information. By being very selective with your personal information, you may be able to avoid becoming a victim of identity theft.

Protect Your Company's Future With a Business Valuation

Planning your company's future without knowing the value of your company is a little like traveling to a new location without directions. In either situation, your chances of reaching your desired destination are poor.



Why would you need to know what your business is worth if you don't intend to sell it? First, if you don't know the value of your business you have no idea of its borrowing power. If you can't do effective estate planning because you are unable to estimate your potential estate tax bill, then you may not be able to divide your estate fairly among your heirs.

That's why periodic business valuations are important. A professional valuation can comfort nervous lenders or investors, set realistic estate and gift tax values and highlight problems you might otherwise not be aware of. It also can provide information needed for long-term business and tax planning.

Since tax laws, the economy, and your business situation can change frequently, you should have your business revalued periodically. Using an obsolete valuation will defeat the purpose of your current planning and may do more harm than good.

We can help get you started and help gather the necessary financial information. We can also help with related issues, such as qualifying for a loan, preparing for ownership changes, or charting the future of your business. For more information about valuing your company please contact Dirk S. Nohre at (715) 833-6740.

CLAIM YOUR UNCLAIMED PROPERTY

Wisconsin State Treasury
Unclaimed Property Division
www.ost.state.wi.us

Can help you locate
your unclaimed property.

Check it out!

- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemption

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and

- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

For more information regarding the FLSA, visit the Wage and Hour Division's Web site at www.wagehour.dol.gov

Some allegedly real-life examples of what NOT to put on a resume:

"Disposed of \$2.5 billion in assets." + "Instrumental in ruining entire operation for a Midwest chain store." + "Personal: Married, 1992 Chevrolet." + "I have an excellent track record, although I am not a horse." + "I am a rabid typist." + "Personal interests: Donating blood. 15 gallons so far." + "I have become completely paranoid, trusting completely nothing and absolutely no one." + "References: None, I've left a path of destruction behind me." + "Don't take the comments of my former employer too seriously, they were unappreciative beggars and slave drivers." + "My goal is to be a meteorologist. But since I possess no training in meteorology, I suppose I should try stock brokerage." + "I procrastinate - especially when the task is unpleasant." + "I am loyal to my employer at all costs. Please feel free to respond to my resume on my office voicemail." + "Qualifications: No education or experience." + "Accomplishments: Oversight of entire department." + "Extensive background in accounting. I can also stand on my head!" + "Exposure to German for two years, but many words are not appropriate for business."

The NOHRE REPORT

NEWSLETTER POLICY

This newsletter is designed to present information on business and tax matters in general terms and is not intended to be used as a basis for specific action without obtaining further advice.

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Please forward comments to newsletter@nohre.com