September 25, 2017

Melissa Smith  
Director of the Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division,  
U.S. Department of Labor  
Room S-3502  
200 Constitution Avenue N.W.  
Washington, DC 20210

Re: Request for Information; Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees – RIN 1235 – AA20

Dear Ms. Smith:

The Independent Electrical Contractors (IEC) appreciates the opportunity to provide comments to the U.S. Department of Labor (DOL) regarding the Wage and Hour Division’s Request for Information (RFI) on Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees as published in the Federal Register on July 26, 2017.

Established in 1957, IEC is the nation’s premier trade association representing 3,000 independent electrical and systems contractors and their suppliers, and includes 50 chapters nationwide. Headquartered in Alexandria, Va., IEC aggressively works with the industry to establish a competitive environment for the merit shop—a philosophy that promotes the concept of free enterprise, open competition, and economic opportunity for all.

The 2016 Final Rule issued by DOL to increase the minimum salary to qualify as an exempt employee from the current $455 per week (or $23,660 per year) to $913 per week ($47,476 annually) was an extreme and unprecedented increase of nearly 100%. It also included future automatic updates to the threshold every three years. IEC continues to oppose this massive increase and the inclusion of automatic updates.

**Impact of 2016 Final Rule**
An increase of the minimum salary threshold at the level of the 2016 Final Rule, or close to it, would negatively impact merit shop electrical contractors and employee advancement in the industry. One example is the progression of electricians, who are paid hourly, to advance to the role of estimator, who are typically salaried. The hours of an estimator can vary widely because the number of bids for electrical work does not follow any regular trend. Some weeks there is nothing to estimate while others require more work than can be completed in a 40-hour work
week. With the large standard salary level increase in the 2016 Final Rule, some merit shop electrical contractors would likely reclassify some estimators to hourly from salaried, reducing morale and bonus potential.

In addition, the 2016 Final Rule would require merit shop electrical contractors to adjust schedules and demands on certain employees within the company. For example, when the time arises and extra help is needed, most businesses will request that salaried employees paid above the threshold amount work longer hours and those paid on an hourly basis be sent home. This removes the ability of the lower paid employee to earn extra money. Not only will overtime pay not be available to them, but the bonuses at year end will go to salaried employees, which also leads to a widening of the income gap.

**Salary Level Increase**

When considering a revised standard salary level, IEC recommends that DOL evaluate the economy in a more analytical way than merely looking at a fixed percentile of the entire country. This may be accomplished by utilizing the methodology used in the 2004 Final Rule, which relied on actual wage and salary data, and set the salary level test slightly lower because of the impact on lower-wage industries and regions. IEC does not believe it is appropriate to use inflation as a basis for setting the standard salary level since the cost of goods alone does not directly impact pay.

Ultimately, IEC cautions DOL at making any significant increases to the standard salary level to determine eligibility for overtime. Any increase should be modest and must consider regional variations in the cost of living. IEC also advises against any automatic updates to the salary level and should only consider updates periodically through the formal rule making process to allow the opportunity for public and other stakeholder comment.

**Changes to Duties Test**

Almost as important as the salary level is an appropriate duties test under the *Fair Labor Standards Act* (FLSA). Enacted in 1938, the FLSA was designed for the workplace of the 1930s and 40s, and to this day, fails to account for the workplace of the 21st century. Today, technology provides employers and their employees the flexibility that wasn’t possible just 20 years ago. Certain job duties, even in the construction industry, can now be performed from anywhere in the world at any time. Consequently, this evolution has made it increasingly difficult for employers to track specific hours worked, for FLSA compliance purposes, compared to the more structured workplace when the law was enacted.

IEC recommends that DOL take on a comprehensive review of the FLSA and engage all stakeholders in an effort to modernize it for today’s workplace. A modernized FLSA with simplified, bright-line standards will make compliance easier, which will benefit both employers and employees alike. In the end, businesses should be given plenty of time, of at least a year, to implement any changes made to both the overtime threshold and the duties test.
IEC appreciates the opportunity to provide feedback to this Request for Information. Please let us know if we can be of any additional assistance.

Respectfully submitted,

Jason E. Todd
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Independent Electrical Contractors