

Bill Would Broaden FLSA Computer Exemption

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A bill introduced in the U.S. Senate (S. 1747) would significantly expand the scope of the current exemption for certain computer employees that is found at Section 13(a)(17) of the federal Fair Labor Standards Act. The proposed "Computer Professional Update" Act (or "CPU" Act) was submitted by North Carolina Senator Kay Hagan and three co-sponsors. It is now pending in the Senate's Committee on Health, Education, Labor, and Pensions.

A Little History

The FLSA exemption status of employees in the computer field has been a bone of contention since the mid-1960s. The application of the FLSA's executive exemption in the computer field has been no different over that time, but for many years the U.S. Labor Department took a particularly narrow view of what sort of computer-oriented work qualified for the FLSA's administrative or professional exemption.

Then, in 1990, Congress directed DOL to issue regulations under which computer systems analysts, computer programmers, software engineers, and other similarly-skilled workers could be exempt. DOL finalized professional-exemption regulations for this purpose in 1992. However, the only employees in the running for exempt status were those meeting these descriptions whose work required "theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering . . ."

One might infer that Congress was not satisfied with DOL's efforts, because in 1996 it amended the FLSA itself to add Section 13(a)(17) ([link to reproduction below](#)). Among other things, Congress's own version did not require "theoretical and practical application of highly-specialized knowledge . . .". In 2004, DOL modified the regulatory exemption to harmonize it with the statutory one.

Still Behind The Times

The rapid evolution of computer technology, the Internet, and other areas has arguably left even these most-recent exemptions in the dust. For example, to a considerable extent their definitions of exempt work incorporate outmoded terms and concepts dating to the early 1990s or even before. Many believe that the exemptions, along with DOL's restrictive interpretations of them, fail to take into account substantial changes in the computer field and the occupations it encompasses.

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The CPU Act would address this in a variety of ways. For instance, unlike the present versions, it would incorporate "information technology" occupations and would expressly refer to work involving things such as databases, the Internet, intranets, networks, debugging, components and hardware, security, configuration, and systems integration and continuity. It would also create an exemption for employees who are "directing the work of individuals" performing exempt computer or information-technology duties; presumably this would apply more-broadly than does the FLSA's executive exemption.

Even if the CPU Act becomes law, states and other jurisdictions need not provide such an exemption from their own minimum-wage and overtime laws. Moreover, a jurisdiction that has its own computer-employee exemption would not be required to harmonize it with the CPU Act.