Start Planning (And Budgeting) Now To Comply With New FLSA Regulations

Insights
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The U.S. Department of Labor (USDOL) recently finalized its long-awaited rule that will double the minimum salary for employees to qualify for the overtime exemption under the Fair Labor Standards Act (FLSA). The impending change will force healthcare employers to conduct a tricky balancing act in determining whether to increase exempt employees' salaries or convert them to nonexempt status.

This will require you to review your pay practices to ensure that employees are classified correctly under the FLSA. If you decide to reclassify any of your employees to nonexempt, you are strongly encouraged to start the process for determining how you will compensate these workers at once. You should also review your policies regarding overtime and "off-the-clock" work to minimize exposure for overtime costs.

What Will The New Rule Do?
The final rule, which will take effect on December 1, 2016, broadens federal overtime pay regulations to increase the salary threshold required to qualify for the FLSA's "white collar" exemption to $47,476 annually, or $913 per week. The rule also includes provisions to automatically adjust that salary level every three years to account for inflation.

The new salary level set by the USDOL is more than double the current $23,660 annual (or $455 weekly) cutoff necessary for executive, administrative, professional, outside sales, and computer employees to qualify for the FLSA exemption.

Affected Employees In The Healthcare Industry
One of your preliminary considerations will be an analysis of the types of employees in your industry who will be impacted. In most circumstances, the affected employees are not likely to be actual healthcare providers, such as physicians and physician assistants. Doctors are automatically exempt from the overtime and minimum wage provisions, and physician assistants and nurse practitioners generally fit into the professional duties exemption and are usually paid more than $50,000 annually.

While registered nurses (RNs) also meet the professional duties test, many healthcare employers voluntarily classify RNs as nonexempt employees. However, the regulations will certainly affect those employers that classify RNs as exempt but pay them less than $50,000 annually. Other nursing staff, such as licensed vocational nurses (LVNs) and certified nurse assistants (CNAs), fail to satisfy the professional duties test and are not eligible for exempt status. Thus, they will be unaffected by the new regulations.

The new rule will have the most significant impact on nonmedical staff, such as employees in administration, human resources, information technology, compliance and risk management, facility and department management, medical records, marketing, and research. Again, the new rule will force you to consider either reclassifying many of these employees as nonexempt, or raising their salaries to meet the new threshold in order to maintain exempt status.

Reclassification: A Cost-Benefit Analysis

Well before the final rule takes effect on December 1, you should start thinking seriously about how compliance with the rule will impact your business operations and finances. This analysis will require a critical review of your organization's budget and payroll structure.

As an initial step of a cost-benefit analysis, you should conduct a thorough audit of your workforce to determine the employees who will no longer be considered exempt due to the failure to meet the minimum salary threshold under the new law. This is also an advantageous opportunity to review the primary duties of employees currently classified as exempt to ensure proper classification.

The audit should include an analysis of the type and number of employees currently classified as nonexempt, as well as the number of hours those employees usually work in a given day and week. Further, this process should include a determination of whether your organization has current job descriptions which accurately reflect job duties and essential functions.

You will then need to determine and budget for the hourly pay rate for newly classified nonexempt employees. The obvious method is to divide the employee's current salary by work hours in a year to calculate the hourly rate. However, if the employee typically works more than 40 hours per week, you should calculate the hourly wage to include the overtime so that the employee's total weekly wages are relatively equivalent to the employee's former nonexempt salary.

For current exempt employees who work a substantial amount of overtime, you may consider hiring additional employees. This will help ensure that your employees will not be required to work overtime when converted to nonexempt status.

Certainly these business decisions will require you to budget for salary increases as well as potential increased overtime costs. Thus, it is crucial that you also review your pay policies to ensure overtime exposure is limited.

This includes clearly communicating to newly nonexempt employees (who may be unfamiliar with overtime rules) that overtime may not be performed without supervisory permission and that "off-the-clock" work is strictly prohibited. You must determine how these employees will record their work hours, and implement a policy that requires all worktime to be recorded.

Finally, from a human resources standpoint, you will to need prepare effective communication and education strategies for employees being transitioned from exempt to nonexempt status, because such changes may be perceived negatively by affected employees.

The Main Takeaway

Because implementation of the FLSA's new minimum salary threshold for exempt employees is just around the corner, it is imperative that you take a critical look at the types of employees in your organization who will be affected and start planning and budgeting accordingly.

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