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Overtime, Minimum-Wage Rule Changes to Affect Employers

Commentary by
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The release of the U.S. Department of Labor's new regulations affecting overtime and minimum-wage requirements came with a few expected changes — and a few surprises — all of which should catch the attention of employers of all stripes.



Buchsbaum

What was unexpected was the date the new rules go into effect. Dec. 1 is considerably later than had been anticipated.

What was of little surprise, however, is that employers nationwide will have to address — and possibly change — how they view and how much they pay their so-called white-collar employees.

The new changes to the regulations governing the federal Fair Labor Standards Act address how much employers have to pay employees qualifying for the executive, administrative, professional, computer-employee and highly compensated employee exemptions — the white-collar exemptions.

The DOL is effectively doubling the current salary threshold in a move that will both reduce the number of employees qualifying for the exemptions while increasing the compensation of many who will remain exempt. As a result, some 4.2 million workers now will be eligible for overtime pay. The action is seen by some as an effort by the Obama administration to raise middle-class wages, given that efforts to raise the minimum wage have been rebuffed in Congress.

The changes come as the number of salaried workers who qualify for over-

time pay has decreased to 7 percent from 62 percent in 1972, according to figures from the administration. The new rule will raise that figure to 35 percent.

Among the most notable changes, the minimum salary level necessary for the white-collar exemptions will rise from \$455 per week, or \$23,660 per year, to \$913 per week, or \$47,476. The DOL arrived at this figure using the 40th percentile of “earnings of full-time salaried workers” in the lowest-wage census region, which currently is the South.

The new threshold for total annual compensation for the “highly compensated employee” exemption will increase from \$100,000 to \$134,004. The figure represents the 90th percentile of “earnings of full-time salaried workers” nationally.

Unchanged are hourly or blue-collar workers. Those employees are entitled to overtime pay, regardless of their hourly wage.

Except for exempt “highly compensated employees,” the DOL will allow employers to satisfy up to 10 percent of the new threshold through nondiscretionary bonuses and other incentive payments, including commissions. However, such bonuses or other payments must be made at least quarterly.

In another change, the DOL will publish automatic updates to the minimum salary threshold every three years. Both exemptions will be updated and likely increased for the first time on Jan. 1, 2020. Any changes will be announced 150 days in advance.

With these changes, the DOL clearly avoided making any changes to the job-duty tests applicable to the white-collar

exemptions. Some believe, though, that the regulations will more appropriately compensate white-collar employees commensurate with their value as managers.

PRACTICAL EFFECTS

What do the rule changes mean to employers?

Given the six months' lead time, companies should begin evaluating how they will compensate affected employees. While some are considering lawsuits or anticipating congressional action aimed at stopping the changes, until either is successful employers should assume the new requirements will take effect as scheduled.

Human resources now should begin the process of:

- Analyzing whether the requirements for the white-collar exemptions you have been relying upon are met,
- Evaluating what might be changed about one or more jobs so that the incumbents may be treated as exempt in the future,
- Considering the possible application of alternative FLSA exemptions and
- Developing FLSA-compliant pay plans for employees who have been treated as exempt but who no longer will be.

A more dramatic change will be the need for employers to better monitor hours worked by the newly classified workers to ensure they don't exceed 40 hours. What formerly were exempt employees who never clocked in or out may require a more formal approach to timekeeping. Human resources may need to address potential loss of morale as white-collar employees

find themselves formally signing in and out each day.

Employers have six months to plan for this, so use that time wisely. There's no need for snap decisions — or procrastination. Take a look at your workforce. Identify all employees you're currently treating as exempt, especially those making below \$913 a week. Start thinking now or soon how your company will want to treat them.

This also presents an opportunity for employers to remedy potential workforce misclassification in a way that doesn't raise any red flags about previous classifications. Changes can be the result of the new regulations rather than a possible admission that employees had not been paid properly in the past.

No one-size-fits-all solution will necessarily work here. Every company should address this uniquely to its own circumstance. While manipulating exemption requirements to “give employees a raise” has never been an authorized or legitimate pursuit, if you have an employee making \$46,000 a year it might be easier to raise them to \$47,500 and be able to maintain the exemption from minimum wage, overtime and record keeping. Conversely, if an employee making \$30,000 had been treated as exempt, it's unlikely a \$17,500 a year raise is justified based on their work or job.

Come Dec. 1, employers will need to be prepared to compensate their exempt workforce according to the new rules. Prepare now — and avoid any further surprises.

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