Proposed Overtime Regulations Will Likely Affect Your Dealership

Insights
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The United States Department of Labor (USDOL) recently announced proposed revisions to some of the most commonly used exemptions to minimum wage and overtime, saying it will “extend overtime protections to roughly five million workers” and “transfer income from employers to employees in the form of higher earnings.”

But how, specifically, will the proposed regulations impact dealers?

Changes Will Only Impact White-Collar Workers
Let’s start by clarifying that the USDOL’s proposed regulations only address the so-called “white-collar” exemptions: executive, administrative, and professional employees. In the dealership context, this is generally limited to the Dealer, General Manager, Controller, CFO, and Department Managers. If there is any good news to be had, it’s that the USDOL’s proposed regulations do not impact the exempt status of your other employees, such as salespersons, technicians, and parts-counter employees.

Next, the USDOL’s proposed regulations would raise the minimum salary level necessary for white-collar employees to be exempt from minimum wage and overtime to the equivalent of the 40th percentile of all full-time “salaried” workers in the country, which it projects will be $50,440 in 2016. The agency would also implement annual updates which may adjust the minimum salary level to ensure that it accounts for inflation and other factors going forward.

In sum, the USDOL’s proposed regulations will simply require dealerships to pay certain key employees a minimum salary of at least $50,440 per year to remain exempt from minimum wage and overtime, with annual increases to follow.

“Not So Fast, My Friends…”
That sounds easy, right? After all, the vast majority of dealership executives and managers make well over that amount.

Not so fast. Remember, under the USDOL’s proposed regulations, a white-collar employee must receive a “salary” of at least $50,440 per year, exclusive of bonuses, commissions, and other incentive payments. In our experience, it is not uncommon for Customer Relations Managers, Detail Managers, Sales Managers and others who satisfy the duties tests of the white-collar exemptions to

Managers, Sales Managers and others who satisfy the duties tests of the white-collar exemptions to receive a salary below $50,000, but earn bonuses and incentives that put their total earnings well over the $50,000 mark.

Under the proposed regulations, these employees would no longer be exempt from overtime simply because they do not receive a "salary" of at least $50,440 per year, even though they are still compensated generously and perform critical, "white-collar" work.

Action Step: Identify Positions Now
Dealerships should therefore promptly identify any managers or other key employees who receive a salary, draw, or guarantee of less than $50,440 per year but are not paid overtime, and decide how to proceed.

In many cases, no further action will be necessary, as the employees may satisfy a number of other overtime exemptions, such as the "commission-paid" or "salesperson" exemption. In other cases, you may have to slightly increase a manager's draw or salary while slightly decreasing their commission percentage, so that the manager earns approximately the same as before but in a manner that satisfies the USDOL's proposed regulations.

Regardless, inaction is not an option. When the proposed regulations are made final, employees will begin to question their pay and whether they are now "overtime-protected." At that point, you must be confident that you are paying your employees correctly, and be prepared to discuss and explain pay plans with them.

We cannot predict exactly when the regulations will be finalized or when these revisions will take effect. However, it seems probable that the USDOL will finalize the revisions as soon as they reasonably can, which could come as soon as late this year.

If it has been a while since you conducted a payroll audit, now is the time to do so. Dealers can identify and correct any payroll issues now, before the proposed regulations become final. After that, it may be left in the hands of a court or the government.

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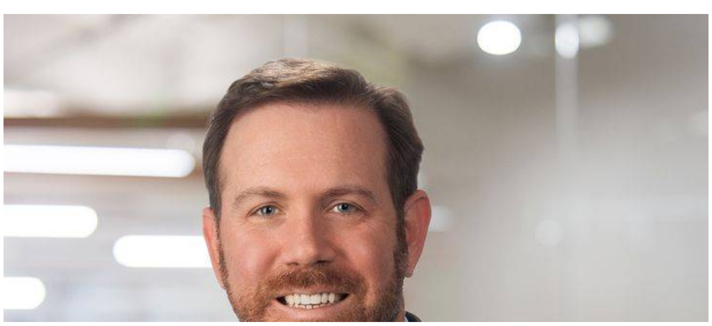

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