



The Country's In For A Big Change...Are You Ready?

Insights

11.01.16

The time is quickly running out for you to make your decision about what you're going to do. Which direction will you choose? Some have already made up their minds and are steadfast in their decision. Some are still considering which option is the best. Others believe that there are no good choices and will choose the best of the bad options. Still, others will simply sit this one out.

While this analysis certainly could apply to the upcoming elections, the decision at issue here is how you will respond to the upcoming changes to the federal wage and hour regulations taking effect on December 1, 2016. These changes may not have as much impact on employers as the elections are sure to have, but they will have an immediate effect.

With about a month to go before the effective date of the regulations, many dealerships still are struggling with how the changes will affect them. You might still be wondering what steps, if any, you should take to be compliant with what has been called the "new overtime rule."

Some hold out hope that congressional action or pending lawsuits may halt the implementation of the changes. We cannot predict the outcome of those actions. For that reason, dealerships should assume the changes will become effective on December 1 and plan accordingly.

Fortunately for small-to-midsize dealerships, these changes should have minimal impact. For large dealership groups with larger support operations, the impact will be greater due to the number of affected employees.

Blueprint For Action

The first step to deal with the upcoming changes is to understand what they **are** and what they **are not**. The changes **are** an increase in the minimum salary requirement necessary for employees to be treated as exempt under the executive, professional, and administrative exemptions. These are collectively and commonly known as the "white collar" exemptions. The dealership positions that most generally fall under one of the white collar exemptions are general managers, department managers, controllers, and human resources.

There may be a few others. As with all exemptions, the actual job title is not determinative. Instead, in order to be eligible for an exemption, the employee's primary job duties must meet wage and hour law requirements, and the employee must be paid in a manner consistent with the legal requirements for the exemption.

Currently, the minimum weekly salary requirement for white collar exempt employees is \$455. As of December 1, the minimum salary requirement increases to \$913 per week. In response to this doubling of the minimum salary requirement, some employers have decided to treat employees who would qualify for a white collar exemption as nonexempt and pay them an overtime premium when due. For this reason, the upcoming changes to the regulations have been dubbed the “new overtime rule.”

Although treating white collar exempt employees as nonexempt is a viable and legal option, there may be other options if you do not want to increase salaries to meet the new minimum requirement. One option is to consider a fluctuating workweek pay plan. Another option is to treat the employee as a commission-paid employee. Both of these options have specific requirements that must be met. And, as with all other aspects of employment law, you should consider state and local law before making any changes, and consult with legal counsel with wage and hour law experience.

Stay The Course: Many Things Will Still Be The Same

What the changes are **not** are a wide-ranging modification to the exemptions available to dealerships. The good news is that the minimum salary requirement increase is the only aspect of the white collar exemptions that will change effective December 1. The duties requirements, which examine whether the specific activities performed by the workers qualify them for the exemption, are unchanged.

Further, the only dealership job positions affected by the upcoming changes are those mentioned above that are treated as exempt under a white collar exemption. No other job position is affected, even if all or part of the compensation for that position is in the form of a salary.

For example, salespersons, advisors, finance managers, and partspersons who are paid a salary as some or all of their compensation are not impacted by this change and dealerships are not required to change or increase their salaries. Of course, for the employees in each of these positions to qualify for any exemption, they must meet the eligibility requirements for that specific exemption.

Conclusion

Although the impending changes should not impact a significant number of dealership employees, you should use them as an opportunity to audit your federal and state wage and hour compliance. Too often, employers misclassify employees or fail to pay them in compliance with legal requirements. There can be no debate that there will never be a better time to correct any mistakes and to take steps to avoid potential liability for non-compliance.

For more information, contact the author at TCoffey@fisherphillips.com or 404-240-4222.

Related People



Tillman Y. Coffey
Partner
404.240.4222
Email

Service Focus

Wage and Hour

Industry Focus

Automotive Dealership