

WHAT YOU SHOULD KNOW ABOUT THE NEW(EST) “NEW OVERTIME RULE”

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As you no doubt have heard, the United States Department of Labor recently announced changes to federal wage and hour regulations that have been labeled the “new overtime rule.” These changes are scheduled to take effect on January 1, 2020. This “new” overtime rule replaces the previous “new” overtime rule that was scheduled to take effect on December 1, 2016 but never did. A court blocked the implementation of the 2016 version.

Although the DOL’s second attempt to implement a new overtime rule may not be welcome news to dealerships, the news is not that bad. For one, those dealerships that geared up for the first iteration of the new overtime rule likely have a big head start on complying with version two. Another positive is that the new rule should impact relatively few employees of a typical retail automotive dealership.

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 in dealing with the upcoming changes is to understand what they **are** and what they **are not**. They **are not** a change to current overtime laws and they **are not** an implementation of new overtime laws. Instead, these revised regulations **are** (primarily) an increase in the minimum salary that an employee must receive to be eligible for one of the “white collar” exemptions, assuming all other requirements are met. To be clear, employees do not qualify for the white-

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collar exemption or any other for that matter simply because the employee is paid a salary.

White-collar exemptions include the executive, professional, and administrative exemptions. Dealership positions that most generally fall under one of the white-collar exemptions are general managers, department managers, controllers, and human resources. Corporate offices may have additional white-collar positions that will be affected by the new regulations.

As with all exemptions, neither the job title nor the job description is determinative as to whether an employee qualifies for a white-collar (or any other) exemption. Likewise, a dealership's longstanding pay practice or that of its competitors is not determinative as to exempt status. Instead, to be eligible for an exemption, the employee's primary job duties must meet both state and federal wage and hour law requirements (duties test), and the employee must be paid in a manner consistent with the legal requirements for the exemption (pay test).

Currently, the minimum weekly salary requirement for white-collar exempt employees is \$455. As of January 1, 2020, the minimum salary requirement increases to \$684 per week. In response to this increase in the minimum salary requirement, some dealerships 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 hourly nonexempt is a viable and legal option, there may be other options available for dealerships that 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

The good news is that the minimum salary requirement increase is the only aspect of the white-collar exemptions that will change effective January 1, 2020. 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. The changes are **not** a wide-ranging modification to the exemptions currently available to dealerships. No other job position is affected by these changes, even if all or part of the compensation for that position is paid in the form of a salary.

For example, salespersons, service advisors, finance managers, and parts persons 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.

ARE YOU OTHERWISE IN COMPLIANCE?

We recommend that dealerships use the upcoming changes as an opportunity to audit their federal and state wage and hour compliance, even if they performed an audit in preparation for the 2016 implementation of the new overtime rule. During that process, a number of dealerships reviewed and revisited their classification and pay issues and made necessary changes in areas not directly impacted by the new rules.

With the renewed focus the change will have on wage and hour compliance, we believe this is the perfect time to correct any mistakes and to take steps to avoid potential liability for non-compliance. Your favorite Fisher Phillips attorney will be happy to assist you along the way.

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