FP Hospitality Industry Snapshot: Hospitality Employers Must Quickly Prepare for New Overtime Rule With 7 Steps

Insights
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Hospitality employers will likely feel a big impact from the new federal overtime rule, which significantly raises the exempt salary threshold for certain employees in two phases. Specifically, the salary threshold for the so-called "white-collar" exemptions will rise from $35K to about $44K on July 1 and will jump to nearly $59K at the start of 2025 – which means your managers and other key roles will need to earn at least this much to even be considered exempt from overtime pay. Here's what hotels, restaurants, and other hospitality employers need to know about the upcoming changes and seven steps you should consider taking now.

What Happened?

The U.S. Department of Labor (DOL) issued a much-anticipated final rule on April 23 that raises the salary requirements for white-collar exemptions under the Fair Labor Standards Act (FLSA). The FLSA is a federal law that, among other things, requires employers to:

- pay non-exempt employees an overtime premium of 1.5 times their regular rate of pay for all hours worked beyond 40 in a workweek; and
- keep time records for all hours worked.

These requirements do not apply to "exempt" employees – and the DOL's latest changes may cause employees who were previously exempt under the FLSA to become non-exempt and therefore entitled to overtime pay. Specifically, the final rule raises the salary thresholds under the FLSA's:

- administrative, executive, and professional exemptions (which are collectively known as the "white-collar" exemptions) to $844 a week ($43,888 annualized) beginning July 1 and to $1,128 ($58,656 annualized) beginning January 1, 2025; and
- "highly compensated employee" (HCE) exemption to $132,964 on July 1 and to $151,164 on January 1, 2025.

The salary threshold is slated to automatically update every three years starting July 1, 2027.

For a deeper dive into the new requirements, you can read our full Insight here.

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Although you have some time before you must comply with the steep increase to $58,656 — from the current $35,568 threshold — the compliance deadline for the first jump of over $8,000 a year is rapidly approaching. Consider taking these seven steps now to prepare:

1. Review job duties and determine whether your employees are properly classified as exempt in general before taking next steps. Remember that your employees must perform certain duties to be considered exempt under the white-collar exemptions. For example, is management the primary job duty of your assistant managers and supervisors? Some jobs that are typically difficult to classify based on job duties include:

- **Restaurants:** chefs, food service managers, assistant managers, and shift supervisors.
- **Hotels:** assistant managers, sales managers, sous chefs, housekeeping supervisors, event and banquets managers, front desk and concierge managers, and engineering supervisors.

2. Don't forget that applicable state laws may have higher, stricter, or different wage and hour requirements, including different exemptions and job duty requirements and higher salary thresholds.

3. Analyze compensation data for all affected employees. If an employee is currently exempt and will fall below the new salary threshold, you will need to decide whether to increase their compensation to maintain their exempt status or change them to a non-exempt (usually hourly paid) employee and pay them overtime. Up to 10% of the new salary threshold can consist of non-discretionary bonuses, incentive pay and commissions. So, you may need to consider adjusting the split between salary and incentive pay for employees who receive commissions (like sales managers), service charges (like banquet managers) or incentives (like some food and beverage leaders, such as sommeliers).

4. Update your budget. You will need to factor in any potential increases into your labor budgets and decide how to proceed. This may be particularly difficult since the deadline to comply with the first increase is rapidly approaching – and it may require adjustments to your current staffing models, compensation structure, menu/room pricing, and hiring plans.

5. Review your policies on timekeeping and overtime pay because you will need to communicate these policies clearly and quickly to employees who will change from exempt to non-exempt status. If you have employees who will be classified as non-exempt going forward, this also includes planning for changes like setting them up in your timekeeping system and making sure they receive any training or policy documents that they did not receive while classified as exempt.

6. Decide how to communicate changes. In addition to developing communications focused on employee relations and morale, you'll want to provide a written communication to each employee about the specific changes to their compensation and benefits and what new responsibilities come with the changes, such as timekeeping, meal and rest breaks, and other requirements.

7. Prepare notices. Note that some states require advance notice of wage changes, so you should check your local requirements. Regardless of the state law, however, you should clearly communicate the new terms of employment before they take effect.

Conclusion

Fisher Phillips will continue to monitor developments in this area and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our Hospitality Industry Team.

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