



# FLSA Exemption Changes: More On Salaried-Employee Alternatives

Insights

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Our April 27 [post](#) gave an example of how to reduce the financial impact of a previously-exempt employee's becoming subject to the federal Fair Labor Standards Act's overtime requirement.

The illustration had to do with the implementation of a "fluctuating workweek" plan. This has raised a follow-on question about whether similar cost-control measures are available for other compensation methods.

The answer is that they *are*.

## A Salary For 40 Hours

For instance, assume that management decides to pay an employee a fixed weekly salary representing straight-time compensation for her hours worked up to 40 in a workweek. Assume also that her weekly salary as an exempt employee was \$800, and that she typically works 50 hours in a workweek.

If the employer sets her new weekly salary at \$580, then, in a workweek in which she works *exactly* 50 hours, the total FLSA-complying amount for that workweek is:

$(\$580 \div 40) = \$14.50$  Regular Rate

$[(\$14.50 \times 1.5) \times 10 \text{ OT hrs.}] = \$217.50$  OT Compensation Due

$(\$580 + \$217.50) = \$797.50$  Total FLSA Wages.

Of course, under this approach, her total wages would be lower if she had worked, say, 45½ hours in the workweek; they would be higher if she had instead worked 52¾ hours in the workweek.

## Payment By-The-Hour

In the above hypothetical, a similar outcome would result from the employer's deciding to pay the employee on a strictly by-the-hour basis at an hourly rate of \$14.50.

The fundamental difference in the hourly approach is what the employee would receive for a workweek in which she works *less than* 40 hours, such as 35½ hours. Under the salary-for-up-to-

40 method, the arrangement calls for paying her the fixed weekly amount of \$580. But by-the-hour pay would result in lower wages of ( $\$14.50 \times 35\frac{1}{2}$  hrs.) = \$514.75.

Naturally, management must weigh the potential financial advantages of a by-the-hour approach against the possible employee dissatisfaction that the plan might provoke.

### **The Bottom Line**

Employers can also take cost-control concerns into account in establishing other alternatives. But remember that, under any method designed to comply with the FLSA's general overtime requirement, the employer:

- May not adjust a fixed salary or an hourly rate from workweek-to-workweek or in each pay period to "back into" a projected amount of compensation;
- May not simply assume that the employee has worked the same number of hours each workweek;
- Must instead accurately capture and record all of an employee's hours worked in a workweek and must compute and pay compensation on the basis of those actual hours worked; and
- Must be sure that the plan also complies with the applicable requirements of *other* wage-hour laws.