



Alerts

What Employers Need to Know About Shrinking Overtime Exemptions

May 19, 2016

Employment Practices Alert

The hour has arrived. Last summer, the Wage and Hour Division of the Department of Labor announced substantial revisions to federal regulations regarding who is exempt from overtime pay. After almost a year of waiting, the DOL announced this week that it will publish the final form of these regulations under the Fair Labor Standards Act (FLSA). The final publication will occur on Monday, May 23, 2016, but the rule is publicly available now.

Bottom Line Up Front: More Employees Will Be Eligible for Overtime

At its most basic level, the new rules mean that, beginning on December 1, 2016, employees making less than \$913 a week (\$47,476 annually) must be paid one and one-half times their regular rate of pay for all hours they work over forty (40) hours in a workweek, regardless of the employees' duties. *This includes salaried employees making less than \$913 a week!*

An Overtime Refresher

The law requires the payment of overtime wages (consisting of one and one-half times the employee's regular rate of pay) for the hours an employee works over 40 hours in a workweek. The FLSA provides a number of exemptions to this general requirement.

The "white collar exemption" is commonly used for executive, administrative, professional, outside sales, and computer employees. An employee is exempt from overtime pay if (1) he or she is paid at least a certain amount on a salary basis (the "threshold") and (2) his or her tasks qualify the employee as a "white collar" employee (the "duties" test). If the employee does not earn enough money to meet the threshold, his or her duties are irrelevant and the employee must be paid overtime.

The new rules include the following changes:

- By nearly doubling the salary threshold for exemption from \$455 to \$913 a week, many formerly-exempt white collar workers will suddenly be eligible for overtime pay when they work over 40 hours a week.
- The rules increase the "total annual compensation" threshold for "highly-compensated employees" from \$100,000 to \$134,004. This rule applies to those employees whose duties do not qualify for an exemption under the duties test, but who both pass a "minimal duties" test and earn total

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compensation above the threshold.

- For the first time ever, the DOL is also indexing the salary and compensation thresholds in order to keep up with inflation.

In the end, the DOL estimates this expansion will cover 4.6 million workers. Meanwhile, others estimate this expansion will cost employers \$1.2 billion.

What Employers Need to Do

Between now and December 1, 2016, you need to:

1. Evaluate whether your currently-exempt employees must soon be paid overtime. You may need to assess a combination of employee pay, hours, position descriptions, and the actual duties performed.
2. Consider the ramifications this change has to your operations and finances on issues as diverse as employee reclassification, assignments, staffing levels, full or part-time status for employees, and strict monitoring and/or restriction of employee overtime, among many other issues.