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New FLSA Overtime Changes

4 Steps to Take Now to Prepare

MAY 2016

Introduction

New overtime rules covering millions of American workers are slated to go into effect Dec.1, 2016. These updates will dramatically raise the minimum salary requirement for certain employees to qualify as exempt — or not entitled to overtime pay. In this booklet we examine key steps organizations should take so they and their employees are prepared.

4.2 million

WORKERS AFFECTED

$23,660/yr

CURRENT MINIMUM EXEMPT SALARY

$47,476/yr

NEW MINIMUM EXEMPT SALARY

Note: This guide the first of two booklets we've developed on the FLSA Overtime changes. For more information on the key workplace policies you should update in light of the new rules, how to best communicate the changes to your employees – including a sample letter – and frequently asked questions, please see Part 2, the FLSA Overtime Changes Fact Book.

THE NEW RULES

The new FLSA changes — **effective Dec. 1, 2016** — will double the salary threshold of millions of "white collar" workers from $455 a week to $913 a week in order to qualify for exempt status.

The rules call for automatic increases to the exempt level threshold every three years in order to keep pace with inflation.

WHO'S COVERED UNDER THE "WHITE COLLAR EXEMPTIONS"

- Executive
- Administrative
- Learned Professional
- Creative Professional
- Computer Professional
- Outside Sales Employees

WHAT THIS MEANS FOR EMPLOYERS

Millions of employees will either need to be reclassified as non-exempt or have their salaries raised to the new threshold. Employers who fail to do so may face claims for back pay, interest, and other penalties.

The Timeline

MARCH 2014
Directive to DOL

JUNE 2015
Proposed rules announced

SEPTEMBER 2015
End of comment period

MAY 2016
Final rules announced

DEC.1, 2016
New rules effective date

Businesses have until **Dec. 1, 2016** to comply with the new rules.

4 Steps Businesses Can Take Now to Prepare

01

Identify which employees may be affected

02

Determine the hours worked by affected employees

03

Consider appropriate compensation strategies

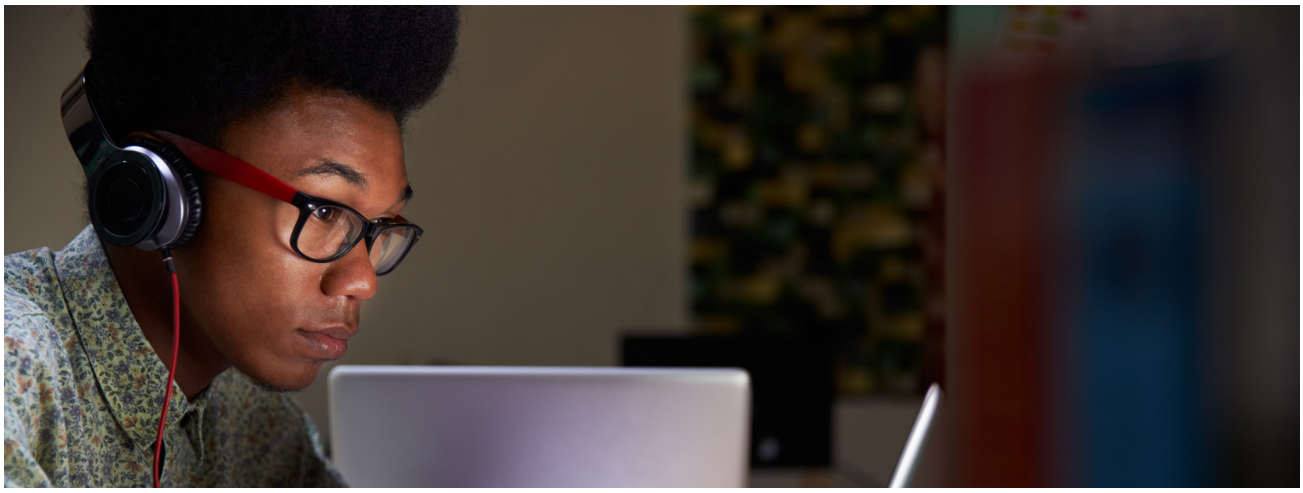
04

Look at the big picture and refine your policies as needed

STEP 01

IDENTIFY WHICH EMPLOYEES MAY BE AFFECTED

To start preparing for the FLSA rule changes, first determine which, if any, of your employees are currently classified as exempt, but are making less than $47,476 per year. The rules indicate that the salary minimum will increase every three years (with the Jan. 1, 2020 expected to be just over $51,000), so keep in mind that the exemption status of employees currently being paid just over the minimum will be in jeopardy a few years down the road.



TIP:

As a best practice, consider identifying exempt employees at or below $52,000 a year to properly budget for future automatic annual salary increases.

STEP 02

DETERMINE THE HOURS WORKED BY AFFECTED EMPLOYEES

In order to figure out which employees would best be reclassified or given a pay increase, you need to know how many hours they're putting in.

Don't be tempted to simply calculate each employee's hourly rate assuming they work 40 hours a week. You may be surprised.

THE IMPORTANCE OF ACCURATE HOURS WORKED

EXAMPLES: EMPLOYEE MAKING $45,000 A YEAR

If you simply calculate hourly wages based on the assumption that the employee is working 40 hours a week, the result for an employee making $45,000/yr would be $21.63/hr. Here's why that may not be your best option:

Basic equation

$45,000 divided by 2,080 (hours worked in 52 40-hour weeks) = $21.63/hr.

EXAMPLE: DEANNA MAKES $45,000 A YEAR

Deanna is a manager currently working 60 hours a week. If she starts getting 20 hours a week of overtime, she'll make over $67,000 and get a huge pay increase.

EXAMPLE: BEVERLY ALSO MAKES $45,000 A YEAR

Beverly is an efficient executive who always meets her deadlines. She's putting in 30 hours a week. If she's paid by the hour, she'll make under $34,000 and see a significant pay decrease.

STEP 02

DETERMINE THE HOURS WORKED BY AFFECTED EMPLOYEES: TIME TRACKING

As you can see, the number of hours worked can make a large difference when paying on an hourly basis. To gather accurate hourly data, you'll need to ask your affected employees to do something new: **track their time**.

You could ask the currently exempt employees to use the same timekeeping system as non-exempt employees, have them track their time with an app for their computer or phone, or do something as casual as have them track time on sticky notes and let you know each Friday.

Whichever method you choose, be sure to communicate with your employees beforehand to help alleviate concerns.

TIP: 2 KEY MESSAGES TO TELL YOUR EMPLOYEES ABOUT TIME TRACKING

1. Time tracking is about compliance with new laws rather than about micromanagement.
2. You won't be using the information to make any deductions from their paycheck.

STEP 03

CONSIDER APPROPRIATE COMPENSATION STRATEGIES

For employees making close to $47,476 and working 40 hours a week, it may make sense to simply increase their salary to the new exempt level and avoid the administrative costs of having them track their hours.

For those employees who currently work significantly more or less than 40 hours a week, here are some options. Let's use the Deanna and Beverly examples from the previous section.

STEP 03

CONSIDER APPROPRIATE COMPENSATION STRATEGIES

EXAMPLE: DEANNA MAKES $45,000 A YEAR

OPTION 1: Give Deana a $2,476 raise to meet the exempt threshold and avoid overtime and administrative costs of paying her by the hour.

OPTION 2: If giving Deanna a raise is not an option, she'll need to be reclassified as non-exempt and paid by the hour. Since Deanna is working 60 hours a week now, in order to maintain her current $45,000 salary, you'd need to determine what's called her "cost-neutral rate." Here's how it's calculated:

Calculating Deanna's Cost Neutral Rate

Salary: $45,000
Annual overtime hours: 1,040
Overtime rate: 1.5 times regular pay rate

$45,000 / (2,080 + (1,040 X 1.5)) = $12.36/hr

DECISION POINT

Since Deanna's cost neutral rate is $12.36/hr — much lower than the $21.63/hr someone working 40 hours a week would earn — reclassifying her as non-exempt and paying her hourly may result in Deanna feeling devalued.

She'd also need to continue working 60 hours a week just to maintain her previous level of income. This is ultimately a business decision, but morale should probably be a bigger part of your cost-benefit analysis when deciding what to do with Deanna.

STEP 03

CONSIDER APPROPRIATE COMPENSATION STRATEGIES

EXAMPLE: BEVERLY MAKES $45,000 A YEAR

OPTION 1: Give Beverly a $2,476 raise to meet the exempt threshold and avoid overtime and administrative costs of paying her by the hour.

OPTION 2: Since Beverly is currently working fewer than 40 hours a week, it's easier to determine her hourly wage. No overtime needs to be accounted for. Here's how it's calculated:

Calculating Beverly's Hourly Wage

Salary: $45,000
Hours worked per week: 30
Hours worked per year: 1,560

$45,000 / 1,560 = $28.85/hr

DECISION POINT

As an executive, Beverly's new rate of $28.85 per hour is likely commensurate with her level of responsibility and contribution to the company.

However, if you had been under the impression that Beverly was working closer to a 40-hour week, or that her services are not worth almost $29 per hour, you may be facing a harder conversation.

STEP 04

LOOK AT THE BIG PICTURE AND REFINE YOUR POLICIES AS NEEDED

Once you've crunched the numbers of those employees affected by the rule changes, take some time to consider those who aren't.

For example, if someone working 40 hours a week making $45,000 a year suddenly gets a $3,000 raise, will his manager who frequently works overtime and makes $54,000 also receive a raise?

If you convert Deanna to an hourly wage and she compares her $12.36 per hour with a non-manager making $15, does that send the non-manager a message that moving up the hierarchy is a bad idea? Whatever decisions you make, try to ensure that they are as impartial as possible and that you're documenting the business-related reasons for each change.

It's a good idea to talk with — and prepare — your employees now for potential compensation changes, even if you haven't decided how each employee will be affected.

STEP 04

LOOK AT THE BIG PICTURE AND REFINE YOUR POLICIES AS NEEDED

Finally, this is also a good time to revisit some of your policies that may apply differently to exempt and non-exempt employees, and train managers on how to properly apply them.

POLICIES TO REVISIT

- Timekeeping
- Off-the-Clock Work (like checking email after hours)
- Meals and Rest Periods
- State and Local Overtime
- Travel Time
- Bring Your Own Device (e.g., personal cell phone)
- Payroll Changes

WRAP UP

As you can imagine, the new FLSA changes are leaving employers with a lot to consider.

While talking with your employees about possible compensation changes may be a bit uncomfortable, it's best to start those conversation now, so your organization is in compliance by the December 1 effective date.

LEARN MORE

We can offer you and your clients a full suite of FLSA tools and resources, along with live HR consulting and an online HR compliance platform you can access anytime.

For more information, contact:

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