

New Overtime Regulations— Stay in Compliance



On May 18, 2016, the Department of Labor (DOL) announced a "final rule" that increases the minimum salary threshold required to qualify for overtime exemptions. The final rule will have a significant impact on how employers compensate their workforce. This article outlines the new regulations and provides recommendations for staying in compliance.

Final Overtime Rule

The final overtime rule updates the regulations governing overtime pay under the Fair Labor Standards Act (FLSA) as follows:

- Increases minimum salary threshold under the "white collar exemption" to \$47,476 per year (\$913 per week). The current regulation is \$23,660 per year (\$455 per week).
- Increases threshold of highly compensated employees (HCE) from \$100,000 per year to \$134,004 per year.
- Up to 10 percent of the salary threshold can be met with nondiscretionary bonuses, incentive payments, or commissions. These payments must be paid at least quarterly.
- Automatic updates of the salary thresholds will occur every three years, beginning January 1, 2020. The automatic updates will keep the minimum salary threshold in line with the 40th percentile of full-time salaried workers in the lowest income Census region of the country (historically this has been in the South). The HCE threshold will be kept in line with the 90th percentile of full-time workers nationwide). All new salary levels will be posted in the Federal Register 150 days before their effective date, beginning August 2019. It is estimated that the first salary increase in 2020 will increase the minimum threshold to \$51,000.
- No change has been made to the current job-duties-related tests for establishing whether an employee is eligible for overtime compensation.

These new regulations will take effect December 1, 2016. With the increases established under the final rule, approximately 4.2 million workers nationwide will be eligible for overtime pay within the first year of implementation.

The last time overtime regulations were updated was in 2004. The change in regulation became necessary because the salary threshold set by the DOL has not kept up with inflation - so the number of salaried employees who qualify for overtime pay has decreased significantly over the years.

The General Standard

The Cost of Noncompliance

According to recent research conducted by ADP, only 25 percent of small business owners and 50 percent of midsized employers are aware of the new overtime regulations and are taking action to comply. Failure to comply can be costly.

- It is estimated that in 2015 the number of wage and hour lawsuits increased by nearly eight percent to 8,781 cases.
- On average, companies pay \$6.9 million to resolve a wage and hour lawsuit (according to data compiled from January 2007 through March 2015).
- In 2014, nearly \$214 million in back wages were recovered for employees. This is a 22 percent increase from 2004.
- If an employee is misclassified as exempt, they can be eligible for two years' worth of back wages. If the violation is considered "willful," then employees can be eligible for up to three years of back wages. This is paid at 1.5 times the employee's regular hourly rate. Plus employers may have to pay liquidated damages equal to the unpaid wages. This means employees can collect up to three times their regular rate of pay if an overtime violation occurs.

The Cost of Noncompliance

The number one mistake employers make when it comes to overtime regulations is wrongly classifying employees as exempt from overtime pay. Here are a few things you can do to make sure you are in compliance:

- Evaluate current employee classifications and job descriptions to ensure employees are classified correctly. Plan a regular review of these classifications to ensure you stay in compliance as new employees are hired.
- If you have employees classified as exempt, make sure they meet the requirements to be exempt under the current overtime rules.
- Be prepared to pay more attention to the employees' work hours. Regularly monitor schedules and hours worked.
- Update policies and procedures to include how to manage the work of non-exempt employees.
- Take a look at your time and labor management systems. Do you have the tools you need to help ensure you are in compliance while also keeping costs in check?

If you have employees who fall below the new threshold who qualify as exempt, you have several different options:

- Pay the time-and-a-half rate for overtime hours
- Increase the employee's salary above the new threshold
- Limit the employee's hours to 40 per week
- Some combination of the above

As the new overtime regulations take effect, employers will be under increased scrutiny by the DOL. Take advantage of the time you have before the regulations take effect to monitor your current system, check employee classifications, and make sure you are in compliance.

Consider the Repercussions When Making Changes

Resources

The Department of Labor will be releasing technical guidance documents designed to help employers come into compliance with the new rule. Visit www.dol.gov/overtime for a short video that highlights the changes and for more resources about the final rule.

Contact your insurance advisor to learn more about the new overtime regulations and for further assistance in making sure you are compliant.

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