

INCREASE TO THE MINIMUM SALARY FOR EXEMPT EMPLOYEES



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FLSA—OVERTIME EXEMPTIONS

“Exempt” employees:

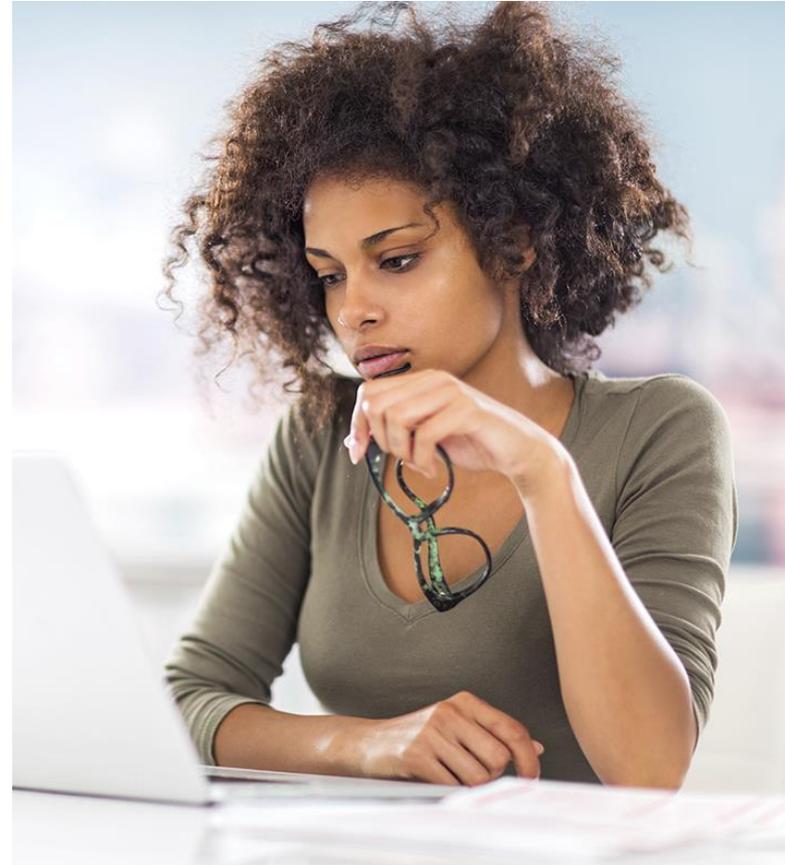
- Not limited in number of hours they can work
- No entitlement to extra pay for extra hours
- No overtime pay
- Paid the same amount each week regardless of the quality or quantity of work performed
 - Does not apply to outside salespeople, teachers, doctors, and lawyers
 - Does not apply to computer professionals paid at least \$27.63/hr



FLSA—WHO IS “EXEMPT”?

Three CURRENT criteria:

- Paid on “salary basis”—same amount each week, with no improper deductions
- Paid at least \$455/week (or \$27.63/hour for certain high-level computer employees)
- Satisfies “duties test” of at least one type of exemption



OVERTIME EXEMPTIONS

Must fit at least one of the narrow exempt classifications defined by statute:

- Executive
- Professional
- Administrative
- Outside Sales
- Computer
- Highly Compensated



WHAT'S NEW?

Revised salary basis regulations issued by U.S. DOL

- Increase in salary basis to 40th percentile of weekly earnings for full-time workers in lowest earning census region
- \$913 per week (approx. \$47,476 per year)
- Regulations to take effect on Dec. 1, 2016
- Salary basis to be adjusted every 3 years
- Up to 10% of salary basis can come from non-discretionary bonuses, incentive payments, and commissions, paid at least quarterly

WHAT'S NEW? (CONT'D)

Revised annual amount for highly-compensated employee designation

- Designation qualifies for a minimal duties test
- Annual earnings requirement increased from \$100,000 to \$134,004
- To be updated every 3 years to equal the annualized value of the 90th percentile of weekly earnings of full-time salaried workers

PRACTICAL IMPLICATIONS

Compensation options for affected employees

- Increase their salary to \$47,476 per year
 - Non-discretionary bonus or incentive payments (including commissions) can be used to satisfy up to 10% of the salary level
 - Must be paid at least quarterly
- Reclassify as non-exempt at the existing rate, and pay OT if worked
- Reclassify as non-exempt, and reduce wage rate to offset increased wages due to OT
- Reclassify as non-exempt, and limit OT
 - Hire more employees, spread work around



PRACTICAL IMPLICATIONS (CONT'D)

Compensation options for reclassified employees

- Salaried non-exempt
- Fluctuating workweek method

PRACTICAL IMPLICATIONS (CONT'D)

Options When Employees in Same Position are Earning Above and Below New Salary Level

- Adjust everyone's pay so that everyone is earning at least the new salary level
 - Compression issues
 - Morale problems
 - Retention problems if not paying market rates
- Bifurcation within same job position
- However you proceed, communication is key to minimize morale issues and confusion

PRACTICAL IMPLICATIONS (CONT'D)

Communication with Affected Employees

- Be proactive and clear with affected employees regarding how they are affected.
- Follow-up in writing to confirm all changes in pay or other terms and conditions of employment.
- All changes should be prospective.

PRACTICAL IMPLICATIONS (CONT'D)

Using new regulations to make other changes to ensure wage-hour compliance

This is a rare opportunity (first time in 12 years) for employers to audit their wage-hour practices and make needed changes to comply with applicable wage-hour laws, while benefitting from the “cover” of the new regulations.

PRACTICAL IMPLICATIONS (CONT'D)

Using new regulations to make other changes to ensure wage-hour compliance

Example: An exempt employee who makes in excess of the salary level requirement (current and new) but does not satisfy any of the duties' tests is misclassified.

- Reclassifying that employee as non-exempt is dangerous, and sends up a red flag to the employee
 - “Why am I now entitled to OT, if nothing has changed?”
- These new regulations provide a context for the change that will draw attention away from the misclassification.

PRACTICAL IMPLICATIONS (CONT'D)

Using new regulations to make other changes to ensure wage-hour compliance

- Now is the time to conduct an audit to get your wage-hour house in order.

HOW TO CONDUCT AN AUDIT

- ➔ Use the attorney/client privilege

- ➔ Identify areas of potential non-compliance/scope of the audit
 - Exempt/non-exempt
 - Independent contractors
 - Off-the-clock work
 - Meal breaks
 - Rounding
 - Travel time
 - Regular rate calculations for OT payments
 - Deductions from pay
 - Timing of paychecks (including final paychecks)
 - Payment of accrued/unused PTO

- ➔ Follow pre-determined processes and procedures

TIMEKEEPING ISSUES FOR NON-EXEMPT EMPLOYEES

- Meal periods
- Preliminary/postliminary work
- Donning/doffing
- Stand-by/on-call time
- Waiting time
- Training time
- Travel time
- Calculation of the regular rate
- All OT worked should be paid even if not authorized
 - Pay but discipline



THANK YOU! QUESTIONS?



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