

# New Rule Released – U.S. Department of Labor Final Overtime Rules and Benefit Considerations

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For the first time since 2004, the U.S. Department of Labor (DOL) raised the nation's exempt salary threshold from \$455 per week/\$23,660 annually to \$913 per week/\$47,476 annually, meaning more than four million workers will now become eligible for overtime pay.

The new overtime regulation – announced mid-May – dates back to 1938 when a law was enacted to establish the federal minimum wage. The new regulation will allow for automatic updates every three years, beginning January 1, 2020. The new rule has increased the salary threshold for certain highly compensated executives (HCEs) to \$134,004 per year.

Workers and employers most impacted by this regulation will likely be retailers, the fast-food industry, universities, and nonprofits. The National Retail Federation trade group estimates the new threshold will affect about 2.2 million retail and restaurant workers, or 64 percent of salaried employees in the industry.

## EMPLOYERS PERSPECTIVE

Many employers are trying to get their arms around the way these changes are going to impact their business and workers. While time is needed to review the full regulations released, employers need to determine whether and how the new overtime regulations will affect their labor costs.

That said, the DOL is allowing employers to use nondiscretionary bonus, incentive pay, and commissions to satisfy up to 10 percent of the standard salary level. This is the first time employers will be able to use this method to satisfy the standard salary level; however, payment must be made on a quarterly or more frequent basis to be eligible.

This new ruling – which will take effect for employers on December 1, 2016 – includes a limited non-enforcement policy from December 1, 2016, to March 17, 2019, for providers of Medicaid-funded services for individuals with intellectual or development disabilities in residential homes and facilities with 15 or fewer beds.

## NEXT STEPS

What happens if an employer finds certain positions no longer meet the standards set out in the white collar exemption? They must then make the decision to

- (1) Readjust duties and compensations to requalify their employees, or
- (2) The positions need to be reclassified as nonexempt and the employees are required to receive overtime pay for all hours worked over 40 hours in a work week.

Employers can achieve the goal of reclassifying a position to nonexempt several ways:

- Reclassify employees as nonexempt (with or without base salary reduction) and pay time and a half for any hours worked over 40 hours in a work week;
- Reclassify employees as nonexempt and maintain the hours worked at or below 40 hours in a work week; or
- Increase employees pay to meet the new salary requirements and maintain exemption status.

Reclassifying employees maybe easier said than done. Employers need to be sure that they have reviewed all components of the employee's compensation including any benefits plans that the employee may be eligible for because of the current exemption status. These benefits may include certain welfare plans for highly compensated or key personnel, ancillary products such as employer-paid life insurance or disability insurance, additional paid time off (PTO), memberships, and any other perks employees may be entitled to because of the exempt status of their position.

Although these benefits are not given consideration towards the base salary in determining whether the salary meets the minimum salary standard, they are part of the employee's compensation package that could be at risk if the position changes exemption status.

It is important that in reviewing the classifications of employees that an organization

brings together a team to help properly analyze the company needs, its goals, and the associated costs to make the decision that best meets these criteria. The team should consist of, at a minimum, your human resources (HR) representative, members of the executive management team – including the president and the CFO – as well as any management members of the affected departments. The firm's employee benefits advisor should also be involved in these discussions.

### CHALLENGES FOR THE ADVISOR

For the employee benefits advisor, the new regulations represent an additional challenge to the conversations with clients.

First, if the advisor is too narrowly focused on the benefits discussion (group medical, voluntary, and worksite programs) the advisor may lose sight of the more important near-term needs of the client to address the reclassifying of the positions and potential costs associated with complying with the regulations. This specific topic – when placed alongside the continuation of the slow-walk implementation of the ACA – may cause the benefits discussion to be placed lower on the list of priorities of a client.

But this is another example of how integrated the problems and issues are for a client. It further demonstrates how important it is for the advisor to be aware of all the business issues and align the recommendations associated with the delivery of a cost-effective competitive benefits program.

Second, this also demonstrates why successful advisors are those that have a team of individuals who are knowledgeable about a number of complex, technically challenging

regulations that affect their client's business.

In fact, it is especially challenging when the budget is already allocated to address regulations and avoid penalties to then come up with additional funds that allow the organization to maintain a competitive benefit plan to retain and attract employees. But those advisors that can see the big picture and break it down into manageable tactical deliverables will be regarded as high value by a client.

Lastly, in the past five years, advisors who have transformed their practices are now having conversations with clients in four integrated areas:

- employee benefits along with worksite or voluntary programs;
- compliance and regulatory matters that affect their clients' businesses;
- how to address their clients' administration and technology platforms to streamline the process and improve tools and information for the employee and employer; and
- a human capital management or human resource management plan.

There are many factors to consider when faced with making adjustments to the benefit offerings in a compensation package. The client may have competing demands or priorities on where to invest their capital. In consideration of these demands, it is critical for an employer to not lose any and all competitive advantage in talent acquisition and retention.

In addition, additional factors to consider include continuing to achieve nondiscrimination in benefit offerings, working hard on any adjustment of carrier rates (group,

worksite, and voluntary products), contribution setting, and benchmarking the employer's offerings within the industry and against the competition. A health and welfare advisor can be a resource to the client and guide these conversations to achieve the financial and nonfinancial goals that are established.

### A TEAM EFFORT

To properly handle the changes that will have to be made, each business should have a team consisting of, at a minimum, a human resources representative, a benefits advisor, members of the executive management team, including the president and the CFO, as well as any management members of the affected departments.

No doubt this is going to require time, effort, and changes on the part of a large majority of businesses – and they will rely more heavily on their benefits advisors. But, once an organization finds that it is compliant, it should stay compliant. Ensure that HR processes are aligned with the DOL three-year automatic adjustment to the standard salary and HCE total annual compensation level. 🌐

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