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Contractors: Prepare for Changes to Overtime Exemption Rules

Proposed hikes will make many white-collar workers eligible for overtime pay. Alert employers can take steps to reduce the impact on their payrolls.



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The U.S. Department of Labor (DOL) has proposed amendments to the Fair Labor Standards Act that will sharply increase the minimum salary requirement for overtime-exempt employees.

Under the current rules, the current minimum salary level to qualify for the overtime exemption is \$455 per week (\$23,660 per year). After the new regulations kick in (probably in 2016), the minimum salary level for qualifying for the exemption would more than double, to \$921 per week or \$47,892 per year.

The minimum salary will be automatically adjusted each year.

An increase that more than doubles the current minimum salary test will have a significant impact on companies that have managers, professionals and administrators who are truly exempt under the current regulations but are making less than \$47,892 per year.

Example

You have an office worker, “Bob,” to whom you pay a \$500 weekly salary. In an average week, he works 50 hours and is exempt from overtime pay.

Under the new regulation, Bob’s \$500 weekly salary will be \$421 below the \$921 per week minimum to qualify for the overtime exemption. If he continues to work 50 hours a week, he will earn \$18.75 per hour for 10 hours of overtime pay. His total pay would go from \$500 under the current rules to \$687.50 under the new rules.

What’s Behind the New Rules

According to a July 7 *National Law Review* article (“Exempt Status in Jeopardy: FLSA Salary Requirements Skyrocket”), the Labor Department suspects that 85% of all white-collar workers who are classified as overtime-exempt pass the “salary test” but fail the “duties test” and should not be exempt. (In other words, their job duties do not meet the standards for “Executive, Administrative and Professional” positions for which the overtime exemption was originally intended.) Thus, the DOL has decided to increase the objective salary requirements in an effort to more strictly apply overtime exemptions.

The *National Law Review* article went on to say that the DOL might also revise the duties tests associated with various exemptions and add job classes for potential exempt status.

What to Do

Various observers suggest that, while you are waiting for the new rules to go into effect, you take a few steps to cut your losses. (It should be noted that the new rules are not final, and the proposed limit could be lowered as a result of the public comment process.)

- Audit your exempt employees’ workloads to determine your likely overtime exposure.
- Recognize which employees’ work weeks can be capped at 40 hours.
- To avoid excessive overtime for reclassified positions, consider the cost of additional full-time or part-time employees.
- Consider whether current exempt positions are accurately classified.
- Review your exempt job descriptions to make sure they accurately describe the duties performed and discretion used.

The new regulations do not require that employees earning a salary of less than \$47,892 per year be paid on an hourly basis. Employees may continue to be paid on a salary basis, but the employer will be required to pay overtime on the salary if the employee works over 40 hours per week. Companies should consult their employment attorney regarding overtime requirements and methods of calculating overtime for nonexempt salaried employees.

Another thing to keep in mind: If the proposed automatic increase to the minimum salary level actually goes into effect, employees who are near the minimum salary level will be required to be given a raise annually to keep up with the minimum salary increases. Your business planning should account for these automatic increases.