

PREPARING FOR RADICAL CHANGES IN OVERTIME LAW



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Introduction

- Active (and well-funded) U.S. Department of Labor Wage & Hour Division
 - More investigators
 - Evolved from information/education role to enforcement



Introduction

- DOL initiatives
 - Independent contractor status
 - Joint employers
 - Targeted employers for 2016:
 - ✓ Hospitality
 - ✓ Construction
 - ✓ Day Care
 - ✓ Food Services
 - ✓ Oil and Gas
 - ✓ Health Care
 - ✓ Janitorial
 - ✓ Temporary Agencies
(leased employees)
 - Changes to overtime for white collar employees



Basics of white collar exemption

- “Exempt” – non-overtime employee
- “Non-exempt” – overtime employee
- Three main categories of exempt white collar employees
 - Executive
 - Administrative
 - Professional



Basics of white collar exemption

- To qualify as “exempt”
 - Paid a minimum salary – now \$455/week or \$23,660/year
 - Salary not reduced based on number of hours worked or quantity/quality of work performed
 - Satisfy a duties responsibilities test



Duties test for executive exemption

- **Primary duty** – Management of the enterprise
- **Consistently and regularly** directs the work of two or more employees
 - Authority to hire or fire (or whose recommendations are given particular weight)
 - Also: advancement and promotion decisions



Examples of exempt executive employees

Yes

Vice presidents

Directors

Store manager

Superintendents

Office managers

No

Working store managers

Working foremen

Duties test for administrative exemption

- **Primary duty** – Office work (non-manual) directly related to the management or general business operations
- Exercise of **discretion and independent judgment** on significant matters



Examples of exempt administrative employees

Yes

Team leaders
Financial services employees
Insurance claims adjusters
HR managers
Accounting managers
Superintendents

No

Loan underwriters
Inspectors
Examiners/graders
Mortgage loan officers
Factory foremen
Real estate closers



Duties test for professional exemption

- Work requiring advanced knowledge of science or learning
- Prolonged specialized instruction
- Exercise of discretion and judgments



Examples of exempt professional employees

- Law
- Medicine
- Theology
- Accounting
- Engineering
- Architecture
- Pharmacy
- Teaching
- Chefs



What is the change?

- Minimum salary level increased to \$913 per week (\$47,476 annually)
- Minimum salary level will automatically increase every three years
 - Tied to wage index
 - Announced 150 days in advance
 - First increase: January 1, 2020



What is the change?

- Up to 10% of the salary amount may be in bonuses, provided the bonus:
 - Is non-discretionary
 - Paid at least quarterly
- “Highly-Compensated” Exemption:
 - Increases from \$100,000 to \$134,004
 - Will be increased every three years, too
- Changes go into effect December 1, 2016



Effects of overtime change

- Millions of exempt employees will not satisfy the increased salary requirements
 - 4.2 million nationally
 - Oklahoma: 50,000
- Salaried employees will be converted to hourly employees
- “New non-exempt” employees will need to begin recording hours worked
- Monitoring/limiting hours worked by “new non-exempt” employees



What employers should be doing now



Breakdown

< \$23,660
annually

- Should already be non-exempt



\$23,660 to
\$47,476

- Increase pay
- Convert to non-exempt and pay OT



> \$47,476

- Exempt if meet duties test

Review classifications

- Review current classifications of exempt/non-exempt employees
 - Identify existing misclassification problems
 - Use the changes in the regulations to fix existing misclassifications



Analyze current overtime usage

- Analyze: Where am I spending money on overtime now?
- Try to gauge where exempt employees are currently working over 40 hours



Evaluate your options

- Identify which employees will be converted from exempt to non-exempt
 - Increase salary to maintain exempt status?
 - Pay current salary and then control hours worked to limit to 40 hours?



Develop ways to control overtime

- Make sure large assignments are given at the beginning of the week
- Redistribute work across current employees
- Consider adding new employees



Enforce your overtime policy

- Clear written policy
 - When is overtime permitted?
 - What approval is necessary?
- Enforce consistently
- Employer still must pay overtime, but can discipline employees for policy violations



Review current time-recording system

- Accurate and effective
- Can be used by “new non-exempt” employees



Educate employees

- Employees will be re-classified – explain why
- Changes from salary to hourly compensation
- Changes to time-recording requirements
- What effect will the change have on hours worked by “new non-exempt” employees?

