



U.S. DEPARTMENT OF LABOR OVERTIME EXEMPTION RULE

PROPOSED CHANGES - FACT SHEET

May 2016

In June of 2015, the U.S. Department of Labor proposed a rule that would dramatically change the way employers handle overtime wage payments. The new rule more than doubles the salary threshold that employees must meet to qualify for overtime exemption. Additionally, there is concern that the DOL will also be making changes to the criteria by which you may exempt employees - the "primary duty test". The rule changes were open to public comment last fall, and the comments are currently under review by the DOL. The rule changes could be implemented as soon as the summer of this year. The following information is provided for informational purposes only. If you have specific questions about the rule changes, or about the potential impact on your particular business or organization, you should consult your human resource representative, insurance company or legal advisor.

Overview

Under the Federal Fair Labor Standards Act (FLSA), workers who currently make less than \$23,660 annually are automatically eligible for overtime if they work over 40 hours a week ("salary level test"). Workers making more than that threshold who have been classified as exempt from overtime under a "white collar exemption" would not have to be paid overtime if they worked more than 40 hours in any work week. Under the DOL's proposed rule changes, the minimum threshold will be more than doubled to \$50,440. Additionally, the proposal looks to increase the "highly compensated individuals" exemption from \$100,000 per year to \$122,148. The DOL is also suggesting that these figures be tied to some pre-determined index and adjusted automatically each year.

Finally, there is speculation that the DOL will also be looking to refine the criteria by which employers currently categorize workers as exempt under the white collar exemption. These exemptions are typically for office staff - executives, administrators, professionals, computer employees and even some outside workers.

What it Means for You

On a national level, this proposed change is estimated to cost employers a **quarter of a billion dollars** per year. If implemented, *the rules would require every employer to conduct a thorough review of all of their employees' exempt status, update all overtime policies and tracking processes, notify employees of the changes taking place, and adjust payroll systems to accommodate the new procedures.* The DOL is also making it clear that violations to the FLSA will not be tolerated. Employers that do not comply with the new overtime regulations will be subject to substantial penalties including lawsuits, criminal charges, fines and more.

What you can do to prepare

At a minimum, employers need to determine which of their employees are currently designated as exempt. In many cases employers are not currently tracking the weekly hours of those workers, and that process will

potentially have to change. Employers should also know which of their exempt workers are typically logging more than 40 hours per week, since those individuals could become eligible for overtime under the new rules.

Although the DOL has not indicated that a change in the white collar exemption criteria is inevitable, employers should look closely at the typical work responsibilities for those employees that are currently classified as exempt so that they are prepared to justify those exemptions when, or if, new rules go into effect.

Example:

A "manager" of a small retail store typically works 50 to 60 hours a week. A major portion of this person's day is consumed by filling in for absent employees, waiting on customers, stocking shelves and a host of other "non-managerial" tasks. Under current guidelines this person does not receive overtime. If there are any changes to the duties test, or the enforcement of exemption criteria, this manager could be paid 10 to 20 hours per week in overtime wages.

Options for Employers

If the proposed rule is adopted, employers have a number of options at their disposal to consider as ways to mitigate the impact of a potentially large increase in payroll costs. Any, or all, of these options must be weighed in conjunction with the financial impact, as well as the service/productivity impact on your business or organization. Here are just a couple of examples of possible changes:

- Salaried employees who are currently exempt, but will fall below the new salary threshold, might be converted to hourly wage workers, with their work hours more closely monitored to prevent them from working more than 40 hours per week. This might also be a good time to evaluate workflows. If an employee is consistently working more than 40 hours per week, while others are not, it's important to understand why so that remedies can be considered.
- Another strategy would be to give employees who are close to the salary threshold a raise to bring their wages over the new minimum. This could prove much more beneficial financially for the employer over paying time and a half for hours worked over 40 per week.

Example:

An exempt manager currently earns \$48,000 per year, and works 50 hours per week. Under the new overtime rules, this manager would earn approximately \$66,000 per year if paid overtime each week. If you gave the manager a one-time salary increase to \$51,000, you would not have to pay overtime under the proposed salary level test. This would result in an annual savings to the employer of \$15,000.

- Employers also have a less attractive option - they can cut hours, or reduce salaried employees' base pay, in an attempt to bring their overall payroll costs down. There is also the possibility that other employee benefits could be impacted (health insurance; sick time; vacation days; etc.) as employers seek alternatives to rising labor costs.

Obviously, any options must still consider the fact of whether the employee is exempt under the white collar exemption criteria in effect at the time.

As previously mentioned, questions specific to your business or organization should be directed to your human resource representative, or to a professional qualified to assist in wage and labor matters. For more information on the new rule proposal you can visit the U.S. Department of Labor's website - <https://www.dol.gov/whd/overtime/NPRM2015/>