

Getting Ready for DOL's Proposed Changes to FLSA Overtime Rules

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Can't wait for summer? Neither can the Department of Labor (DOL)!

At the recent 2016 American Bar Association's midwinter meeting, Solicitor of Labor Patricia Smith announced that the final amendments to the Fair Labor Standards Act's (FLSA) so-called white-collar exemptions will be published in July 2016. The DOL expects the regulations will become effective 60 days after publication and is committed to them being effective by the end of 2016. That means we're looking at a date as early as September 2016 and as late as December 2016 for the new regulations to be in effect.

What we know now

- **The minimum salary threshold could more than double.** Currently, the minimum salary level considered to be a white-collar position is \$455/week (\$23,600 annually). The proposal would raise it to \$970/week (\$50,440 annually). It is estimated that approximately five million additional workers could be immediately entitled to overtime pay.
- **The minimum salary threshold could increase every year.** The minimum salary level has not changed since 2004. For the first time ever, the proposal calls for an annual update to the threshold based on inflation and wage growth.
- **The highly compensated employee threshold will also increase.** The total annual compensation would climb from \$100,000 to \$122,148.
- **The DOL is investigating the possibility of changing the duties tests.** The agency sought comments on possible changes to the tests, including changes related to minimum time requirements for performing exempt duties or on exempt work.

Though the contents of the final rules are not yet fully known, it is imperative that you begin planning now. The proposed rule changes, when put into effect, will likely have unintended consequences.

What you can do...NOW

- **Ensure job descriptions are up to date.** Review the outlined roles and responsibilities for accuracy. Verify current exemption statuses by applying the exemption duties tests as they exist today.
- **Dig into your payroll system's data.** You have most, if not all, the data you need to prepare for the reality of minimum threshold changes right in your payroll system. Perform a compensation analysis on all exempt employees to identify which individuals (or positions) fall short of the new threshold.

- **Start scenario planning.** Evaluate all possible outcomes to determine the best course of action for your organization. For each position, consider the financial impact of increasing compensation to the new minimum salary level (as long as the labor market supports it) or allowing the employee to be eligible for overtime and closely managing hours worked. Be sure to think outside of the "bottom line"; things like employee morale and organizational structure could also be impacted.
- **Check your soft and hard benefits policies.** If soft and/or hard benefits are determined by exemption status, you may have some additional financial impacts and employee morale considerations, outside of compensation, to make.

It is anticipated that enforcement by the DOL will be aggressive and that penalties for misclassification of employees will likely increase. Avoid costly litigation and investigations by getting your organization summer-ready today.

About the Author

Shelly Schwane has 10 years of experience working with nonprofits and shares her diverse background in data analytics, program development, and operational planning to help clients infuse viability into their missions and thrive as community leaders.

Shelly is a leading authority on nonprofit and grant-funded compensation plans and analytics. She has worked with numerous Head Start, Community Action, and other community-based nonprofits across the county to develop and implement fair, affordable, and equitable wage structures.

Driven by a passion for social change, her focus is on supporting mission-driven organizations through human resources and organizational development efforts. She is a member of the Society for Human Resource Management and received her degree in psychology from the University of Wisconsin-Madison. For more information, contact Shelly at 952.548.3351 or sschwane@wipfli.com.

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