

## How the Department of Labor's New Overtime Law Will Affect You

On May 18, 2016, the wait for the much-anticipated release of the Department of Labor's new overtime rules was over. The DOL released its new rules, and they impact virtually all employers. Businesses have until December 1, 2016 to comply with three major changes: 1) a raise in the minimum weekly salary level required for overtime exemption from \$455 per week to \$913 per week; 2) a raise in the total annual compensation required to be considered a "highly compensated employee" from \$100,000 to \$136,004; and 3) updates to the minimum salary threshold every three years. The first update, scheduled to take place on January 1, 2020, is expected to raise the minimum annual salary level to \$51,168.

The DOL estimates that its changes will cost employers between \$239.6 and \$255.3 million per year, and will transfer anywhere between \$1.18 and \$1.27 billion each year in income from employers to employees. Nearly 4.6 million workers earning at least \$455 each week are newly eligible for overtime. Almost 6 million more employees who receive \$455 each week but do not actually perform exempt work now have clear entitlement to overtime on the basis of salary alone.

But money won't be the only thing these changes cost employers. Businesses will be impacted on practically every level. Negotiating and collective bargaining practices may be affected. Employee morale may suffer, either because newly exempt employees will have to track their hours or because they may view the change

as a demotion. Scheduling flexibility may decline. Administrative work may increase because of new timekeeping requirements. Some employees may even lose their fringe benefits.

Employers are on the clock. They only have about six months to look at their business practices, and figure out how to comply with these changes. If employers don't act now, they may suffer consequences in the form of government investigations and private lawsuits later.

Between 2000 and 2015, there was a 450% increase in the number of private wage-and-hour lawsuits filed, and that number isn't expected to stop climbing. Home Depot just reached a \$2.1 million settlement with 120 sales managers who claimed they were wrongly considered exempt from overtime. Last year, PetSmart, Inc. reached a \$3.8 million settlement with 300 managers over similar allegations. Now, it won't just be the PetSmarts and Home Depots of the world in the courtroom; the practices of small businesses will be in the litigation crosshairs, too.

So what can employers do? They should begin reorganizing their workforces, reclassifying their employees, clarifying their policies, and modifying their job descriptions. They should conduct a self-audit, identify all employees currently classified as exempt, and assess whether both the salary levels and the actual work performed qualifies each particular employee as exempt.

To properly qualify as exempt, three requirements must be met. Each exempt employee must: (1) be paid a guaranteed minimum weekly salary of \$913; (2) be paid a fixed amount of pay that cannot be reduced due to the quantity or quality of the work; and (3) perform work whose primary duty falls under one of the three exempt categories: executive; administrative; or professional).

Businesses need to look at the duties each employee actually performs, not just the work contained in the associated job description.

Once an employer performs a self-audit, and identifies the employees affected by the new rules, several options exist to bring the business into compliance. Employers could simply increase the weekly salaries of exempt employees to \$913. If increasing salaries is not a viable option, employers could keep salaries the same, but change the duties to consist primarily of non-exempt work. Another option is to hire additional employees and avoid paying overtime, or to transfer work from overtime-eligible workers to exempt employees.

With so many employees now be entitled overtime, employers need to assess the impact of paying overtime against increasing salaries, and decide which is less costly. For each employee, employers must ask themselves certain questions: Does this employee usually work more than 40 hours each week? By how much? In the case of each employee, an employer must ask itself whether paying overtime actually cost more in the long run than a salary increase.

With the decision to reclassify comes additional revisions of business operations. Job descriptions need to be reviewed and rewritten to reflect the actual work performed in each position if necessary. Hours must be tracked for employees reclassified as overtime-eligible. Policies restricting overtime must be considered. If fringe benefits are tied to exempt status, decisions to address their continued availability must be made. Most importantly, employees must be told about any anticipated changes early. Employers need to develop strategies for explaining changes in employees' pay, exemption status, job description and duties, schedule, or even benefits. Plans to address any new timekeeping requirements or overtime policies must be made.

By conducting a comprehensive internal audit, making necessary modifications to business operations, and communicating changes to employees promptly and clearly, businesses can transition into compliance with the Department of Labor's new rules more smoothly, better factor unavoidable consequences into their budgets, and ease negative consequences to employee, like low morale animosity.

### *About the Author:*

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An experienced litigator, Lisa advises and litigates on behalf of clients in the areas of labor and employment, public and private construction, personal injury, premises and product liability matters. She has served as first- and second-chair counsel in both jury and bench trials and has handled dozens of arbitration hearings across Western Pennsylvania.

Lisa's employment counseling and litigation background is extensive. She works to proactively identify issues before they become lawsuits, and routinely advises clients on best practices for discipline, termination, compliance, training, and other workplace issues. When litigation is unavoidable, she defends employers claims of all kinds, including discrimination based upon age, race, gender, religion and national origin, along with issues involving disability and reasonable accommodations, harassment and retaliation. Lisa assists companies in developing and implementing policies and procedures, drafts employment handbooks, and prepares and litigates various types of business contracts, including confidentiality and non-compete agreements. She regularly appears in state and federal court, and has represented clients before the Equal Employment Opportunity, Pennsylvania Human Relations, and Civil Service Commissions. She also advises clients on matters related to unemployment compensation, OSHA investigations, and investigations by the Department of Labor's Wage and Hour Division.



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