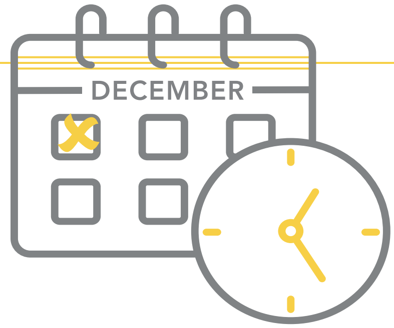
Impact of Changing Fair Labor Standards Act (FLSA)

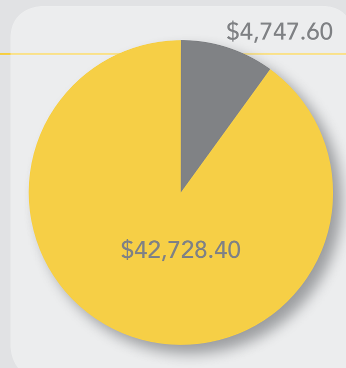
How are you impacted?



On May 18, the Department of Labor (DOL) finally released their much-anticipated overtime rule. It is important for employers to start assessing the changes as new regulations are scheduled to go into effect on December 1, 2016.

NOTE: The December 1, 2016 effective date means that employers should ensure they are in compliance with the pay period that includes December 1.

What has changed?



Exempt Salary Threshold
Under the final rule, the minimum salary level for exempt/salaried professionals increases to $913 per week or $47,476 per year (an annual increase of $23,816).

For the first time, the DOL will allow employers to attribute up to 10% of non-discretionary bonuses, incentive pay, and commissions toward the minimum salary threshold. The 10% compensation must be quarterly or more frequent – **annual bonuses are still not counted toward this number**.

Automatic Adjustments
New to regulation, the DOL has implemented a new mechanism that will automatically update the minimum salary level every three years beginning on January 1, 2020. Going forward, the DOL will publish the updated salary levels 150 days in advance of the effective date.

NOTE: The DOL will utilize the 40th percentile of full-time salaried weekly earnings in the lowest-wage Census region to determine the automatic increase. The next salary threshold adjustment is forecasted to be around $51,000 upon its first update in 2020.

What has not changed?

Duties Test
The DOL did not make any changes to the duties tests for executive, administration or professional exemptions.

Timekeeping Requirements
No changes were made in the regulation governing how employees are to record or report hours worked. If employees are reclassified to non-exempt, they may have to comply with timekeeping rules that have not previously applied to them.

Part-Time Employees
No modifications were made to accommodate workers who perform exempt duties on a part-time basis. However, the minimum salary level per week will still apply in order to be considered exempt.

Jobs Excluded
Remaining unchanged, jobs in which there is still no salary level requirement includes outside sales employees, teachers, and practicing doctors and lawyers.

What do I do now?

Every employer has their unique set of challenges, but it is important to start examining how this changing legislation will affect you. Here are some steps that may assist you as you get started:

1 Audit payroll records and determine employees that will be impacted

Employers should focus on current exempt professionals who earn less than the new salary threshold ($47,476), but it is recommended to use this opportunity to review your workforce and all classification of employees.

2 Assess changes and modifications

After identifying exempt professionals who fall below the salary threshold ($47,476), examine possible modifications to employee classifications. Here are a few options to get you started:

Reclassify employees: With a potential increase in overtime compensation, employers may reclassify exempt professionals to non-exempt and pay them hourly. However, employers need to determine the impact of overtime when reclassifying employees to non-exempt.

Raise annual salary threshold: Employers can choose to increase pay to the minimum salary level. This may be a costly option for employees who are thousands of dollars away from the salary threshold, but an attractive option for those who are close to the threshold today.

Get creative! In some instances, employers may want to step back and take a creative look at restructuring their workforce. Examples may include:

- **Staffing options:**
  - Have you considered programs like job sharing? This could be a creative way to get the job done with no overtime, while meeting the new salary threshold.
  - Restructuring roles and responsibilities or reassigning job duties.
  - Outsourcing, while incurring an "additional" cost, may actually save dollars by keeping job responsibilities to a 40 hour work week.
- **Compensation:** Reclassifying an employee from salaried to hourly doesn't mean you must continue with the same hourly rate of pay. You may want to consider calculating the number of hours the employees works, calculate expected overtime and drop the hourly rate of pay to ensure the team member takes home what he or she earns today.
- **Technology:** Purchasing software programs that creates efficiencies, and reduces the manual labor for certain job duties, may save the company money rather than paying employees overtime.

3 Consider all of the costs

While the additional costs of overtime are obvious, it is important to consider less apparent costs and incorporate into budgeting processes. These are just a few examples of indirect costs that can impact your bottom line:

- The impact on benefits (i.e. company paid life insurance, PTO accruals, et cetera)
- Training costs to educate employees/supervisors on any change in classification
- Additional software/program costs for employees who may be reclassified as non-exempt

4 Create your communication plan

Create a plan to communicate to affected employees and managers. Employers will need to decide if communication will be executed in one-on-one meetings, small group meetings, memos, or some combination of communication tactics. Employers will also need to be prepared to address employee reactions, including concerns and fears, and reluctance to change to ensure a smooth transition.

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