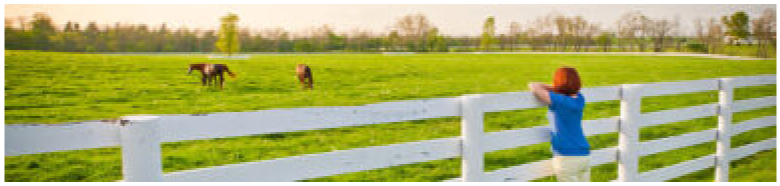
How is Your Farm Impacted by the New Overtime Rules?



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As the December 1, 2016 implementation deadline rapidly approaches, we thought it would be useful to farms to provide some reminders on these new regulations and to illustrate their effect on certain farm managerial, executive, administrative and professional positions. Farms, professionals (myself included!) and even local Department of Labor agents have been confused about interpreting the new rules and applying them to farms.

Earlier this year, we issued an article regarding the potential applicability to farms under the final regulations issued by the US Department of Labor to Part 541, which governs certain executive, administrative and professional positions under the Fair Labor Standards Act (FLSA). A link to that article may be found here:

Federal Overtime Regulations for Thoroughbred Businesses

This article takes a closer look at how the updated Part 541 regulations may impact farms, specifically regarding certain manager-level, executive, administrative or professional farm employees who fall below the new $47,476 salary threshold.

FLSA provides for two categories of employees:

1. Exempt – Salaried
2. Non-Exempt – Hourly or Salaried

“Exempt” in this context means “exempt from overtime pay.” In order to be “exempt,” an employee must meet the salary basis test (fixed salary not subject to reduction based on the quality or quantity of work performed), the duties test (refer to our prior article for a more in-depth discussion), AND the salary level test. If any one of these tests is not met, then an employee is “non-exempt.” A non-exempt employee must be paid based on hours worked in the pay period plus overtime at a rate of time and one-half for hours that exceed 40/week. The prior statement ignores the general agricultural exemption under Part 780, which is specifically addressed later in this article.

The salary basis and duties tests did not change upon issuance of the final regulations, but the minimum salary level was increased to $913 per week ($47,476 per year) from $455 per week ($23,660 per year). Therefore, if a person meets the duties test but is paid less than the minimum salary threshold, this employee is treated as “non-exempt” effective December 1, 2016.

By converting a prior exempt-salaried employee to a non-exempt employee, the farm is now required to track actual hours the employee works and to pay at the calculated hourly rate based on these actual hours. This creates issues for both the farm and these farm employees.

So how does the above change from “exempt” to “non-exempt” status interact with the agricultural exemption under Part 780, which is available to qualifying employees who perform duties on the farm? As a reminder, the agricultural exemption was not changed by the updated regulations. Under Part 780, employees who are engaged in agriculture continue to be exempt from overtime pay at time and one-half (although KY law requires overtime to be paid to employees who have worked seven days in any given work week for all hours worked on the seventh day).

The updated regulations merely convert certain previously "exempt" employees to "non-exempt" status, requiring that these employees now be paid based on actual hours worked versus a salary. However, the hours worked in excess of 40 hours/week are only required to be paid based on the calculated hourly rate, not time and one-half, under the agricultural exemption available to qualifying employees under Part 780.

Let's walk through an example of a broodmare manager who makes $40,000 per year, is paid weekly and works an average of 45 hours per week. Under Part 541, the manager meets the duties test of an executive and, as of November 2016, his salary exceeds the $23,660/year threshold. He currently is treated as an exempt-salaried employee and paid about $760/week ($40,000 per year/52 weeks).

Effective December 1, 2016, the manager does not meet the salary test since his $40,000 salary is less than the newly-established minimum of $47,476. Therefore, this broodmare manager is converted from an exempt-salaried employee to a non-exempt employee.

What does the change in status on December 1, 2016 mean for the farm and the broodmare manager? The farm may address this situation in a variety of ways:

1. Increase the broodmare manager's salary to the $47,476 threshold.
    a. Pro – Less administrative burden because tracking hours is not required.
    b. Con – Increased expense for the farm.

2. Convert to an hourly wage using a 40 hour/work week.
    a. The broodmare manager's $40,000 salary could be converted to an hourly wage, and the manager would be paid by the farm for the actual hours worked in a week. Conversion to an hourly wage per hour is calculated below for this example:
    b. Salary ($40,000) / (40 hours per week * 52 weeks) = $40,000/2,080 hours = about $19/hour.
    c. Therefore, if the broodmare manager works a 40 hour week, he would be paid about $760 ($19/hour * 40) for that week. If he works 60 hours in one week, he would be paid about $1,140 ($19/hour * 60) for that week.
    d. Pro – Keeps base weekly wage the same for the broodmare manager (with increased pay for weeks where greater than 40 hours are worked).
    e. Con – Increased salary expense for the farm and increased administrative burden for both the manager and the farm to track hours.

3. Convert to an hourly wage using the average number of hours worked/work week.
    a. The broodmare manager's $40,000 salary could be converted to an hourly wage, and the manager would be paid by the farm for the actual hours worked in a week. Conversion to an hourly wage per hour is calculated below for this example:
    b. Salary ($40,000) / (45 hours per week * 52 weeks) = $40,000/2,340 hours = about $17/hour
    c. Therefore, if the broodmare manager works a 40 hour week, the pay would be $680 ($17/hour * 40) for that week. If he works 60 hours in one week, he should be paid about $1,020 ($17/hour * 60) for that week.
    d. Pro – Attempts to maintain current salary expense consistent for farm.
    e. Con – Broodmare manager will receive less weekly pay in weeks where 40 hours are worked versus what he received previously (farm may consider a bonus to "true-up" the manager's salary at intervals throughout the year). Increased administrative burden for both the manager and the farm to track hours.

In short, if you are converting a managerial, executive, administrative or professional farm employee from "exempt" to "non-exempt" status, you are required to pay for actual hours worked in a work week, but are not required to pay at time and one-half rates for hours in excess of 40 as long as the employee qualifies for the general agricultural exemption under Part 780.

Note that a ruling regarding a preliminary injunction to implement these FLSA updates is expected to be issued on November 22, 2016 by a U.S. District Court. Another hearing trial could be set for November 28th if the motion is denied. Stay tuned for news on this ruling; however, in the meantime, it is wise to prepare the farm for the December 1, 2016 implementation of these updated regulations.

Please contact me at jshah@deandortonstg.wpenginepowered.com or your Dean Dorton advisor with any questions regarding the above.

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