

AFFIRMATIVE ACTION UPDATE

**** NEWS FLASH ****

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Douglas B. Brown, LLC

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NEW FEDERAL OVERTIME REGULATIONS RELEASED

EFFECTIVE DECEMBER 1, 2016

New regulations changing the Fair Labor Standards Act (FLSA) regarding eligibility for overtime were published on May 17, 2016 by the U.S. Department of Labor (DOL). The FLSA sets rules governing minimum wage and eligibility for overtime.

The changes consist of:

1. A new minimum salary threshold before applying the Executive, Professional or Administrative “Duties Test” of \$47,476 annually (\$913 per week), up from the current threshold of \$23,660 annually (\$455 per week).
2. Up to 10% of the annual amount can consist of bonuses/commissions. So, an individual making \$45,000 annually but receiving a 10% bonus (\$4,500) would meet the new threshold as their total pay would be \$49,500, which exceeds the new \$47,476 threshold.
3. The effective date for the new regs is December 1, 2016. This gives employers slightly more than six (6) months to complete their implementation strategy.
4. The automatic adjustment to the salary level will now occur every three (3) years as opposed to annually.
5. There has been no change to the Duties Test for Executive, Professional or Administrative employees.
6. The threshold for the Highly Compensated Employee exemption is now \$134,404 annually.

This means that an individual must earn at least the new annual threshold (\$47,476) before application of the FLSA’s “duties” exemption test can be considered. The “duties” test evaluates whether the individual meets one of the Executive, Professional, or Administrative exemptions.

Unless an employee is being paid the new limit annually on a salaried basis (with limited exceptions for certain classifications of work), their employer must pay them overtime regardless of their duties. It is only when an employee is paid a salary of at least the new annual limit and meets one of the “duties” exemptions (Executive, Professional, or Administrative) that they will be considered “exempt” and not required to be paid overtime. The new thresholds will be inflation-adjusted and will therefore present a moving target that employers will have to monitor to ensure that exempt employees do not fall below the minimum as the threshold is adjusted.

Accordingly, it is recommended that employers act now to establish a plan for coming into compliance. The following are steps and concerns employers should now be taking into account as they develop their compliance strategy:

1. Identify those employees who are currently considered exempt (not eligible for overtime) who are earning less than \$47,476.
2. For those whose salaries are close to \$47,476, determine whether a raise would be appropriate to keep the employee above the minimum salary threshold.
3. For all employees who will either be moved to or are already above the minimum salary threshold, also evaluate whether their job duties meet one of the Executive, Professional, or Administrative duties exemptions.
4. For currently exempt employees who are earning less than \$47,476, determine how much overtime they are actually working. If they do not regularly work more than 40 hours in a week, it may be more economical to reclassify them as non-exempt and pay them overtime on an occasional basis as opposed to raising their wages above the minimum salary threshold.
5. Determine currently exempt employees who are below the new minimum salary threshold, and who also work a significant amount of overtime, then evaluate the impact on the organization when they become non-exempt. If the overtime they would receive would be greater than giving them a raise to above the threshold, then a raise may make sense. If the amount of overtime they would earn is less than what it would cost to raise their pay above the minimum threshold, then making them non-exempt would make sense. If the employer does not want to either raise wages to above the threshold or pay overtime, then the employer has to determine how they will limit or prevent the employee from working overtime.
6. Even for employees who are currently classified as exempt and earning more than \$47,476, evaluate their actual duties to determine whether the individuals meet the “duties” exemptions.
7. Consider how you will communicate to your employees what is happening. Determine what you will say to those employees who receive a raise to bring them over the minimum threshold as opposed to those who do not. For example, if you have two exempt administrative employees, one who works a lot of overtime and one who does not, and you give one a raise while the other is told that they now receive overtime, consider how you will explain the difference.

There are other cost implications to be considered when the new regulations come into effect. Where benefits, bonuses, insurance coverage, and premiums are linked to either base pay or total earnings, if base pay is adjusted or total earnings increase due to overtime eligibility, these linked costs will also likely increase.

This is a significant change as to who receives overtime. Compliance may be a significant burden. In any event, starting now to establish a plan to comply will provide a better opportunity to come into compliance without a last minute rush and potentially overlooking a serious consideration.

If there are any questions or comments concerning anything contained above, they can be directed to this office by calling us at 440-564-7987 or sending an email to dbb@dbbrown.com. The discussion of this matter is for the clients and friends of Douglas B. Brown, LLC and does not represent nor is intended as a substitute for professional legal advice.