



Overtime Rule Changes Not Final, but Employers Should Prepare

Flowers are blooming, spring is in the air, and summer is just around the corner. For employers, this means that the Department of Labor (DOL) proposed overtime rule changes may be just around the corner as well. As of now, these rules are still only proposed but the DOL anticipates adopting final regulations soon. The proposed changes more than double the salary threshold that helps determine whether workers are eligible for time-and-a-half pay when working more than 40 hours per week. If finalized as proposed, these changes will make nearly five million workers eligible for overtime pay as early as this year, unless their salary is raised. The speculation is that the final regulations will be revealed before mid-May.

Summary of the Proposed Changes

The proposed regulations issued under the Fair Labor Standards Act (FLSA) would impact the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. This exemption is referred to as the FLSA's "EAP" or "white collar" exemption. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The standard salary level required for exemption is currently \$455 a week (\$23,660 for a full-year worker) and was last updated in 2004.

Following months of extensive consultations with employers, workers, unions, and other stakeholders, the DOL, in March, submitted the proposed rules to the Office of Management and Budget (OMB) for review. Once they are final, employers will likely have 60 days in which to comply. The proposed rules seek a significant increase in the salary threshold to \$970 per week (\$50,440 for a full-year worker), which equals the 40th percentile of annual earnings of full-time salaried workers.

Similarly, the proposed rules also increase the highly compensated employee (HCE) exemption threshold to the 90th percentile of annual earnings of full-time salaried workers. Currently, employees who perform certain duties and earn more than \$100,000 annually fall within the HCE exemption. The proposal increases the annual compensation threshold level to \$122,148 a year. Notably, for the first time ever, both salary thresholds would be updated annually via an automatic mechanism to keep pace with inflation.

Should Employers Make Changes Now?

Although the DOL has yet to finalize this ruling that expands overtime eligibility, many businesses are devising compliance strategies and seeking outside counsel even before they know exactly how or when the rules will change. While we do not suggest that employers make changes before the final ruling, we do believe that changes are coming. Therefore, now is the time to develop a strategy to fully prepare your organization for the new overtime classification rules and to control overtime costs, in such ways as implementing a company-wide Time and Attendance system and reviewing job descriptions to ensure they are up to date. The proposed rules will affect wage and hour compliance and, for numerous businesses, substantially impact their labor costs. You should assess the potential ramifications of the proposed overtime rules to your business, and make plans to better manage overtime.

Exempt vs Non-Exempt More Than Just Salary

When evaluating your employees' status, keep in mind that not every employee who receives a salary is automatically exempt — they must also perform exempt duties. You should assess an employee's day-to-



day duties to determine whether or not those duties fall within the FLSA's exemption requirements. There will likely be some employees that fall into a "gray area," whose status will not be easy to determine. In such cases, we suggest erring on the side of non-exempt status, keeping in mind that the employer bears the "burden of proof" that an employee is exempt from overtime.

Next Steps for Employers

This development is shaping up to be the next big compliance challenge after Earned Sick Time in many states and the Affordable Care Act. Most businesses already struggle with overtime eligibility, and when we conduct wage and hour compliance reviews for our clients, we find that many businesses have misclassifications already, without the added struggle of the higher proposed salary ruling. The first step we believe you should take is to ensure compliance with the existing FLSA rules.

1. Review your job descriptions now to determine whether they are still accurate and reflect the job being performed and the skills needed to perform the job. Review employees' actual job duties to ensure that they still fall within the administrative, executive, professional, computer, or outside sales exemptions.
2. Review current employee classifications to ensure that your "non-exempt" employees are properly classified under current rules. For example, this means that employees who receive less than \$455 per week are considered "non-exempt" and must be paid at least minimum wage and overtime.
3. Identify which employees meet the "exempt" classification under the administrative, executive, professional, computer, or outside sales exemptions. Then determine which employees now make at least the current minimum of \$23,660, but less than the proposed minimum of \$50,440 per year. Determine how many hours they typically work per week and factor in any fluctuations in hours during peak periods.
4. Weigh the costs of raising employees' salaries to meet the proposed exemption criteria against what it would cost to reclassify them as non-exempt and pay them overtime when they work more than 40 hours a week. To help you better understand the potential labor costs of the changes, refer to ADP's [online calculators](#). These are designed to provide businesses with a simple assessment of the annual impact at the federal level of paying overtime versus raising salaries to meet the anticipated new salary threshold of \$50,440 per year.
5. Consider implementing a Time and Attendance system now to help manage overtime tracking and labor costs and to protect your bottom line, rather than waiting for the final ruling and joining a long line of companies scrambling to put a T & A system into place. If you are an HR Knowledge current client, please email us at sales@HRKnowledge.com for pricing.

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