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New Overtime Rules Take Effect in December

On December 1, 2016, about 4.2 million workers who were previously classified as "exempt" could become eligible for overtime pay due to modifications to the Fair Labor Standards Act (FLSA), and many small businesses have been scrambling to comply with the new rules. Following is a brief summary of why the changes were enacted, and what they may mean for both workers and employers.

In May 2016, President Obama and Secretary of Labor Thomas Perez announced major changes to the FLSA that are intended to improve the situations of lower-salaried workers who typically work more than 40 hours per week, such as restaurant and retail managers. Because of their long hours and relatively low salaries, such employees can potentially earn less, on an hourly basis, than the associates they manage. The Department of Labor (DOL) has said, "This long-awaited update will result in a meaningful boost to many workers' wallets." However, the new rules may complicate matters for small businesses struggling to maintain appropriate staffing levels while trying to contain labor costs.

Specifically, the new rules increase the minimum salary that an executive, administrative, and professional employee must earn to be considered "exempt" from overtime pay. On December 1, the annual salary threshold rises to $47,476 ($913 per week), more than double the previous amount of $23,660 ($455 per week) established in 2004. This means that employers are considering several options:

- Reclassify all employees making less than $47,476 per year as non-exempt, and therefore eligible to receive time and a half overtime pay when their hours exceed 40 per week.
- Ensure that the salary for all executive, administrative, and professional employees is at least $47,476 per year.
- Ensure that all executive, administrative, and professional employees who make less than $47,476 annually work no more than 40 hours per week.

One caveat is that the rule also allows employers to use nondiscretionary bonuses and incentive compensation (including commissions) to satisfy up to 10% of the new threshold salary requirement, as long as those payments are made on at least a quarterly basis. Also note that the new salary threshold will be adjusted every three years, beginning in 2020, based on wage growth, so affected employee salaries will need to keep pace with these adjustments.

While the rules are intended to improve employee situations by helping them secure either higher paychecks or fewer hours at work — and may indeed achieve that goal for many American workers — the benefits may barely be noticed by employees whose salaries need to rise by small amounts to meet the new threshold. Employers, by contrast, are weighing the requirements of having to track salaried employee hours and potentially make overtime payments against the costs of lifting salaries to meet the threshold.

For more specifics and information, please visit the Department of Labor [website.]

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