Revising the White Collar Overtime Exemption Threshold

WHAT THE 2016 DEPARTMENT OF LABOR REGULATION UPDATES MEAN FOR YOUR NONPROFIT ORGANIZATION
Presenters

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The Fair Labor Standards Act
The Fair Labor Standards Act

FAIR LABOR STANDARDS ACT (“FLSA”)

• Minimum wage and overtime entitlement
  • What is minimum wage?
  • How is overtime calculated?

• Which employers are covered?
  • Enterprise coverage
  • Individual coverage

• White Collar Employees
  • Executive
  • Administrative
  • Professional
Employers Covered

- **Enterprise Coverage**
  - Annual Dollar Volume ("ADV") threshold of $500,000
    - Commercial activities
    - Two or more employees engaged in commerce
  - Named enterprises covered regardless of ADV

- **Individual Coverage**
  - Coverage even if enterprise not covered
  - Involvement in interstate commerce
The Fair Labor Standards Act
“White Collar” Exemption
The exemption – 29 CFR 541

STEP ONE: DUTIES TEST
• Executive, administrative, professional
• Exception for certain employees (doctors, lawyers, teachers)

STEP TWO: SALARY BASIS TEST
• Predetermined and fixed salary

STEP THREE: SALARY LEVEL TEST
• $455 per week or about $23,660 annually
Why were the regulations updated?

DEPARTMENT OF LABOR (“DOL”) STATES THE NEW REGULATIONS:

1. UPDATE THE OVERTIME PAY PROTECTIONS
   • Less than poverty threshold for a family of four
   • Last updated in 2004

2. SIMPLIFY THE OVERTIME RULES

3. ASSIST IN BUILDING ECONOMIC SECURITY
What changed?

**UPDATED SALARY LEVEL TEST**
- $455 to $913/week
- $23,660 to $47,476 annual salary
- Annual indexing
- Highly compensated employees - $100,000 to $134,004 annual salary
- Include nondiscretionary bonuses paid quarterly or more frequently

**DUTIES TEST**
- No changes
- Concurrent duties

**EFFECTIVE DEC. 1, 2016**
Industries and positions most likely to be affected

- Non-profit organizations
- Small businesses
- Office and administrative support
- Construction
- Production
- Managers at food service
- Architecture
- Social workers
- Supervisors in retail
- Counselors
How to apply the regulations to your organization

1. Identify coverage type
   • Enterprise or individual coverage

2. If enterprise, separate hourly and salaried employees.
   • Satisfies the salary basis test

3. Separate out those below salary threshold of $47,476.
   • Satisfies the salary level test

4. Look at the duties of those at or above the salary threshold of $47,476 to ensure they apply to the white collar employee exemptions.
   • Satisfies the duties test
5. If enterprise not satisfied, are any individuals covered?
   • Identify these individuals

6. Identify if these individuals are covered continuously or on week by week basis.

7. Follow steps 3 and 4 (on previous slide).
How to apply the regulations to your organization

1. Is the employee hourly?
   - YES: Probably entitled to overtime unless other exemption applies.*
   - NO: Does the employee earn a salary of at least $47,476?
     - YES: Does the employee have white collar duties?
       - YES: Exempt from overtime.
       - NO: Employee should receive overtime.
     - NO: Probably entitled to overtime unless other exemption applies.*

* Review regulations for other exemptions available.
Case Study - Enterprise Coverage

A non-profit provides health services to the local community, charging clients a fee on a sliding scale.

Are the employees that work at the nonprofit covered by the FLSA on an enterprise basis?
Case Study- Enterprise Coverage

A private non-profit museum that primarily engages in charitable activities also has a gift shop that employees take turns staffing.

Are the employees staffing the gift shop protected by FLSA on an enterprise basis?
A food bank receives food donations from corporations in other states. Staff members are involved in unloading, stocking, and accounting of the food donations.

Are the employees individually covered?
How can employers prepare?

1. Review job descriptions

2. Identify positions likely to change (now and in the future)

3. Identify cost to employer for compliance under various options
   • Salary increase
   • Overtime payments to current pay
   • Readjusting hourly wage to include overtime
How can employers prepare?

4. Consider other impacts for employees

5. Establish a communication plan for reclassified employees

6. Plan training for newly reclassified employees

7. Plan how to approach future increase to allow for annual budgets
Thank you for attending

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