

► This content is for informational purposes only. Consult an attorney regarding specific legal questions.)

Wage Gauge

Getting employers ready for the new overtime rules.

BY MICHAEL C. KELSHEIMER

Overtime wage rules are often a source of confusion for business owners and human resources departments. While many U.S. employees are entitled to be paid overtime, if the duties and pay of a particular position meet requirements set out in various exemptions to the general overtime rule, an employer may choose to not pay overtime. Some of these regulations, however, will soon change.

In response to President Barack Obama's 2014 memorandum asking for updates to the Fair Labor Standards Act, the U.S. Department of Labor announced in May 2016 changes to the exemptions that are designed to decrease the number of exempt employees.

Here are the key updates to the law that employers should know and plan for so that they are in compliance beginning December 1.

Higher Minimum Salary

In addition to the duties test that an employee must meet to be exempt from overtime, the minimum salary requirement is increasing for several white collar exemptions. What used to be a minimum of \$455 per week to be exempt from overtime will now be \$913 per week, or \$47,476 annually. This doubles the current salary threshold level but is slightly lower than what the Department of Labor originally proposed. It is the primary reason many currently exempt employees will soon be eligible for overtime (estimated to affect more than 4 million workers during the new rule's first year of implementation).



Automatic Salary Updates

In an effort to maintain a salary level that is equal to the 40th percentile of full-time salaried workers in the lowest-wage U.S. Census Region (which is currently the South), the minimum salary for exempt employees will be increased every three years. This is a longer period than the Department of Labor's originally proposed annual increases. The first of these salary updates will go into effect January 1, 2020.

Duties Test Unchanged

Though the Department of Labor discussed changing the other specific requirements associated with exemptions

from overtime, it eventually decided not to. If a position was properly exempt from overtime based on the duties assigned before the law change, it will continue to be exempt as long as the rate of pay is at or more than the minimum limit.

Change for the Highly Compensated

One of the exemptions from overtime relates to highly compensated employees. The threshold for this exemption had been set at \$100,000 per year. The new threshold is set at the 90th percentile of full-time salaried workers nationally, which is \$134,004 annually.

Nonprofit Rules Unchanged

Charitable organizations sometimes think they are automatically exempt from overtime rules. They are not. There are certain circumstances too complicated to relate here under which a nonprofit may not be required to comply, but they are not inherently free from complying with the overtime rules, and the change in the law does not affect this.

Consequences for Failing to Comply

Employers that do not comply with the new law may be subject to an audit by the Department of Labor or to litigation in which they may be required to pay back overtime as well as damages in the amount of twice the overtime rate. In litigation, attorney fees may also be charged.

More details on the new overtime rules can be found at dol.gov/whd/overtime/final2016. **TBJ**



MICHAEL C. KELSHEIMER,
a shareholder in the Dallas office of Gray Reed & McGraw, focuses his practice on the employment needs of Texas businesses and executive employees. He is also the author of the Employer Handbook guide and blog at texasemployerhandbook.com.