

update

Compliance News for Employers

May 24, 2016

DOL Issues Final Updated Rule on Overtime: Key Steps in the Countdown to Compliance

The Department of Labor (DOL) recently announced its long-awaited final updated rule governing which white-collar workers are eligible for overtime pay under the Fair Labor Standards Act (FLSA).¹ Overtime pay is 1.5 times the pay rate and must be paid for hours worked in excess of 40 hours per week for nonexempt employees. All organizations must comply with the new requirements no later than December 1, 2016.

Key Provisions of the Final Rule

The final rule is intended to modernize and simplify overtime requirements and ensure the FLSA's intended protections are fully implemented. To accomplish this, the DOL has:

- Set the standard amount for the salary level test at the 40th percentile of weekly earnings for full-time salaried workers, which is \$47,476 per year or \$913 per week. All employees whose full-time salary is below that rate are eligible for overtime pay under the new standard.
- Allowed up to 10 percent of the salary level to be met with bonuses and commissions, which are not included in the salary level for determining overtime eligibility.
- Established a mechanism to update the salary for the salary level test automatically every three years, beginning in 2020.
- Increased the total compensation requirement, including bonuses and commissions, needed to exempt highly compensated employees (HCEs) to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers, which is \$134,004.

Implications

The final rule is expected to extend overtime protections to nearly five million white-collar workers within the first year of its implementation. The DOL estimates that the final rule will transfer an average of \$1.2 to \$1.3 billion annually from employers to employees in the form of higher earnings. The average annualized direct employer costs — regulatory familiarization, adjustment and managerial costs — will total between \$239.6 and \$255.3 million per year.



Regulatory Guidance Highlights:

- The new salary threshold is \$47,476, which is a considerable increase from the previous threshold: \$23,660.
- Starting in 2020, the threshold will increase automatically every three years.
- The duties test — the job must primarily involve executive, administrative or professional duties — is unchanged.
- The salary threshold for highly compensated employees is \$134,004, up from \$100,000.
- The implementation deadline is December 1, 2016.

¹ The final rule was published in the [May 23, 2016 Federal Register](#).

The DOL states that employers are likely to respond to the new rule by either paying time-and-a-half for overtime work, raising workers' salaries above the new threshold, limiting workers' hours to 40 per week, or some combination of the above.² The changes may also result in employers losing flexibility on how they manage their workforce, and may result in a perceived or actual loss of status and benefits for employees who are reclassified under the new rule.

Action Items

Conducting an impact analysis should be the immediate next step for employers that have not already done so. An impact analysis involves:

- Conducting a detailed cost analysis for increasing salaries up to the new minimum threshold vs. paying additional overtime;
- Identifying potential salary compression³ and equity issues; and
- Identifying processes that may need to be redesigned to support effective timekeeping and tracking of hours worked and overtime.

The impact analysis should be followed by development of an implementation strategy, which includes:

- Developing organizational redesign strategies where needed;
- Identifying potential morale, recruitment and retention issues as a result of the changes;
- Developing resources and training programs for managers and employees; and
- Creating a comprehensive communication strategy and plan.

How Sibson Can Help

Sibson works with employers to develop custom solutions to the full range of human capital needs. As a leader in helping organizations to prepare for and implement the new FLSA overtime changes, our professionals can assist you with:

- **Compliance** Conducting FLSA impact analyses is a key aspect of compliance with the overtime rule. Sibson can also assist employers with their strategies to avoid the employer shared responsibility penalty under the Affordable Care Act.⁴
- **Redesign** This includes organizational design and restructuring and process redesign, reengineering and improvement.
- **Compensation** We help with planning, market assessment and salary structure design. In addition, we assist employers in developing pay guidelines and policies.
- **Workforce Solutions** Sibson can help create and support the processes necessary to reclassify jobs in light of the new standards. We can also develop workforce and succession planning tools, as well as recruitment and retention strategies.

² See the DOL's [May 19, 2016 blog](#).

³ Salary compression is the situation that occurs when there is a similarity of salaries despite different qualifications and/or experience levels. Two common examples of salary compression include: (1) when the pay of one or more employees is very close to the pay of more experienced employees in the same job and (2) when employees in lower-level jobs are paid almost as much as their colleagues in higher-level jobs, including managerial positions.

⁴ Because the Affordable Care Act requires employers with more than 50 employees to measure whether a worker is full-time (more than 30 hours per week or 130 hours per month) the FLSA analysis should take into consideration the Affordable Care Act process the employer has developed.

“Conducting an impact analysis should be the immediate next step.”

- **Performance Management** Our professionals assist organizations with the design and implementation of performance-management structures, approaches, programs and tools.
- **Training and Development** We can assist with developing a training strategy and approach, as well as designing training content.
- **Culture Transformation** This includes employee engagement strategies and employer-of-choice initiatives.
- **Change Management** Our professionals assist organizations with planning change management and provide support during the change. We also help organizations develop and execute employee communications strategies.

Questions?

For more information about how these new rules may affect your organization, please contact your Sibson consultant or the [Sibson office nearest you](#).

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