

HR INSIGHTS

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Overview of Proposed Changes to FLSA White Collar Exemption Rules

On June 30, 2015, the U.S. Department of Labor (DOL) released a proposed rule that would overhaul overtime wage payment in the United States. The new rule would more than double the salary threshold that employees must meet to qualify for overtime wage payment exemption—a change that could affect 11 million workers across the United States.

What is changing?

The FLSA requires that eligible employees be paid time and a half for all hours worked over 40 hours in a workweek. However, overtime rules do not apply to certain “white collar” workers, like executive, administrative, professional, outside sales, computer employees and some highly compensated individuals—these are known as the white collar exemptions.

Currently, the salary threshold (salary level test) for overtime pay eligibility under the white collar exemptions is \$23,660 a year or \$455 per week. The proposed rule would more than double the salary threshold to **\$50,440 per year or \$970 a week**. It would also increase the \$100,000 salary level for highly compensated individuals to \$122,148 per year—the 90th percentile of wages earned by workers in 2013. This figure is expected to increase by the time the final rule is implemented.

How will this affect employers?

The proposed rule has been controversial because, if implemented, it would require employers to review employees’ exempt status, update overtime policies, notify employees of changes and adjust payroll systems. According to the Obama administration, the new rule could cost employers between \$240 million and \$255 million per year. Business leaders, though, believe the costs could be even higher.

Preparation Strategies

Given the potential impact of this rule, it is important to start preparing now for potential changes to overtime regulations. The following are some strategies employers can adopt:

- **Conduct an internal audit.** It is estimated that more than 50 percent of all employer groups have misclassified their employees under the FLSA, although

The DOL proposed changes to overtime regulations due to concerns that they were outdated, since the salary thresholds have only changed twice in the past 40 years. For instance, in 1975, more than 60 percent of salaried workers were eligible for overtime pay. Now, only 8 percent of full-time, salaried workers are eligible.



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many do not realize it. An audit can help identify misclassifications and determine who will be eligible for overtime if the proposed rule is implemented.

- **Give raises to employees who are close to the salary threshold.** For instance, if an employee makes \$49,000 a year and regularly works overtime, you could bump up the employee's pay to \$51,000 to avoid incurring overtime expenses.
- **Develop more stringent overtime pay policies.** Consider sending employees home after exactly eight hours, so you do not have to pay overtime costs. This policy can help encourage a healthier work-life balance among employees; however, output may decrease as a result.
- **Reduce or cut benefits to make up for increased payroll expenses.** While this method will protect your bottom line, it may decrease employee morale, lower productivity and result in higher turnover.

Outlook

A final rule is expected by July 2016. The last time the FLSA overtime requirements were updated was in the 2004, and the DOL gave employers 120 days to comply. This time, employers may only have 30 to 60 days to make necessary changes (depending on the time between the release of the final rule and its effective date).

While it is possible that the 2016 elections could change some aspects of the new rule, it is highly likely that overtime pay changes will be implemented in some fashion. If employers fail to respond to overtime changes, they can face various penalties prescribed by the FLSA, including lawsuits, criminal charges, fines and restrictions in commerce.

For more information on how the new white collar exemptions will affect your business and what you can do to minimize overtime pay, contact Clarke & Company Benefits, LLC today.

