

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

SPECIAL CLIENT BULLETIN March 2016

New Overtime Regulations Imminent – Plan Now!

Employers who have been bracing for significant overtime changes should start planning their budget and workforce adjustments now. Based on recent action by the Department of Labor, new rules could be in place **as early as May**. As I have been reporting since last summer, we are due for an overhaul of the overtime exemptions under the Fair Labor Standards Act (FLSA.) Proposed new rules will increase the minimum salary requirements to exempt workers from overtime, from annual salary of \$23,660 (\$455/week) to \$50,440 (\$970/week.) The proposed salary minimum for highly compensated workers would also be raised from \$100,000 to \$122,148.

An estimated 5-15 million employees nationwide may lose exempt status, entitling them to overtime pay for working more than 40 hours in a week. Employers will need to **budget for salary increases and/or increased overtime costs and consider cost-saving measures**, such as reducing hours, hiring part-time hourly workers, and converting salaried employees to hourly employees at a lower hourly rate.

The new regulations have been in the works since the Department of Labor proposed them last summer, and were initially anticipated to be rolled out on January 1, 2016. Extensive comments and challenges to the controversial changes delayed the expected effective date to summer. But on March 14 (ahead of schedule), DOL forwarded its modifications to the Congressional Office of Management and Budget, which is the final step before the rules are published.

During the comment period on the proposed changes, almost 200,000 comments were posted. Many employers oppose any change, while several indicate that a salary increase is acceptable, but not instantly doubling it. We don't know what modifications DOL made following comments, and after OMB's review, Congress will have 60 days to hold hearings before the rule's effective date, which could be here before summer.

Importantly, the rules propose procedures for the **minimum salary requirements to be updated automatically**, rather than the DOL being required to issue new regulations to change the minimums (which haven't changed since 1975!)

Employers should prepare now for the changes:

1. Identify exempt employees whose salaries will fall below the new minimum.
2. Decide whether to increase their salaries to maintain the exemption or convert them to nonexempt status.
3. For converted employees, be sure to make applicable changes, including providing legally required meal breaks and paying overtime. Remember that Illinois employers must keep time records on all employees (both exempt and nonexempt.)
4. Review and update off-the-clock work policies. Consider implementing a policy regarding after-hours use of mobile devices for work-related purposes.
5. Review and update overtime policies. Consider including language encouraging employees to promptly report any error in overtime pay calculations.
6. Evaluate and update time tracking systems.
7. Establish a procedure to keep track of the new minimum salary level increases.
8. Train managers to monitor and track reporting of work time and breaks.
9. Consider employing legal counsel to conduct a wage and hour audit and update your policies.
10. Budget for the upcoming changes now.

This bulletin is an advertisement intended to provide clients and others with general information and is not intended to provide specific legal advice or opinions. Employers and workers seeking assistance with topics addressed in this bulletin or other workplace issues should contact Lori Goldstein at (847) 624-6640 or lori.a.goldstein@gmail.com. Please visit my website www.lorigoldsteinlaw.com for more information about the Law Office of Lori A. Goldstein, LLC.

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