

# Ready, Set, Go!

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## Critical Actions Every Employer Should Take with the New FLSA Overtime Rule

October 2019



# What We'll Cover Today

- A review of regulatory activity since 2016
- What the new FLSA rule covers
- What will – and won't – change
- Proactive measures employers should take in preparation for the change

# A Quick Review

- The DOL issued new overtime rules in mid-May 2016 under the Obama administration
- The changes would have increased the minimum salary threshold for overtime pay exemption from \$455/week (\$23,660 annually) to \$913/week (\$47,476 annually)
- This overtime rule was scheduled to take effect 12/1/16, but it was challenged in the courts
- It was blocked on 11/22/16

# What the New Rule Covers

- Under the new guidelines, the minimum salary requirement will increase to \$684/week (\$35,568 annually)
- While the earlier changes would have affected more than 4 million workers, the 2019 rule will make 1.3 million workers newly eligible for overtime pay
- As of 1/1/20 with very few exceptions, employers will have to pay time-and-a-half to workers making less than this amount for any hours over 40 per week

# What Won't Change

- White-collar duties tests for executive, administrative and professional employees remain the same
- In addition to the salary requirement, certain factors must be met for an employee to qualify for exempt status under these federal tests
- Workers must meet the new salary requirement *and* pass a DOL job duties test in order to be exempt from overtime

# The First Steps to FLSA Compliance



# Step 1: Identify Affected Employees

- Start with salaried employees earning less than \$40,000
- Keep in mind salary threshold may increase in the future
- Consider potential fairness issues with employees slightly over salary threshold
- Evaluate potential for salary inflation

# Step 2: Gather Information

- Confirm actual job duties
  - Engage supervisors
  - Interview employees if necessary
- Determine average hours worked per week
  - How much “overtime” is currently being worked?
  - Consider at-home work, travel, on-call, etc.
  - Consider seasonality



# Step 3: Consider Staffing Options

- Can overtime be redistributed among existing employees?
  - Do certain employees have capacity to take on more?
  - Can tasks be shifted to other teams or departments?
- Is job restructuring an option?
  - Can duties be eliminated or redistributed?
  - Are employees promotable?
  - Is there potential to create levels within job categories?
- Is overtime consistent or seasonal?
- Can overtime work be absorbed by temps or part-timers?

# Step 4: Consider Other Factors

- Understand state and local laws
  - Minimum wage, overtime, mandatory meal/rest breaks
- Evaluate current timekeeping systems
- Evaluate current company policies and benefit plans
  - Are exempt and non-exempt treated differently?
  - How will reclassified employees be affected?
  - Some differences are dictated by law (e.g., docking pay)

# How Should Employers Handle Affected Employees?



# Three Basic Options

Employers can:

1. Increase affected employees' salaries to meet new minimum threshold
2. Convert affected employees to hourly pay and pay overtime premium (1.5x) for extra hours worked
3. Limit affected employees to work no more than 40 hours in a week

# Keep Them Exempt

- For employees close to the salary threshold, consider increasing salary to satisfy exemption
- Compare cost of estimated overtime to cost of increasing salary
- Make sure employee meets the job duties test
- Adjust responsibilities if needed and update job descriptions
- Consider formal promotions

# Scenario #1: Michelle



- One of four graphic designers on staff
- Currently salaried/exempt
- Makes \$33,000 annually
- Least tenured on staff
- Only team member affected by salary threshold increase

# Change Status to Non-Exempt

- Convert to hourly rate
  - Based on 40-hour week with no overtime allowed
  - OR divide by more than 40 hours per week to account for OT
- Leave “salaried”
  - Prohibit overtime (still need to keep track of hours)
  - Pay overtime for hours worked over 40/week
- Options
  - Standard 40-hour workweek
  - Fixed work week (40 hours +)
  - Fluctuating rate

# Standard 40-Hour Workweek

- Employee works a standard workweek of 40 hours
  - Either no overtime allowed or
  - Overtime work is just occasional
- Example
  - Salary of 400 per week ( $\$400/40 \text{ hours} = \$10 \text{ per hour}$ )
  - Works 45 hours on a given week
- Calculations
  - Regular pay is  $\$10 \times 40 = 400$
  - Overtime rate is  $\$10 \times 1.5 = \$15$
  - Overtime pay is  $\$15 \times 5 = \$75$
  - Total pay for the week is  $\$400 + \$75 = \$475$



# Fixed Workweek (40 hours +)

- Employee consistently works more than 40 hours a week
- Example
  - Employee receives a salary of \$450 per week
  - The salary covers 45 hours per week
  - This week the employee actually works 50 hours
- Calculations
  - Regular pay for the week is \$450
  - Hourly rate is  $\$450/45 = \$10$  per hour
  - Overtime rate for the first 5 hours is  $\$10 \times .5 = \$5$  per hour
  - Overtime rate for the second 5 hours is  $\$10 \times 1.5 = \$15$  hours
  - Total overtime pay is  $\$25 + \$75 = 100$
  - Total compensation is  $\$450 + \$100 = \$550$

# Fluctuating Rate

- The regular rate fluctuates depending on the total hours worked each week
- The salary gets divided by the number of hours actually worked
- Overtime is paid at .5 times the regular rate
- Required to pay the full salary even if the employee does not work 40 hours
- Not permitted in every state
- Recommended to consult a labor law attorney before implementing

# Scenario #2: Mark



- Marketing specialist
- Currently salaried/exempt
- Excellent employee
- 2 years at your company
- Makes \$30,00 annual salary
- Works an average of 5 overtime hours each week

# Scenario #3: Susan



- 20-year employee
- Operates engraving machinery
- Dependable employee
- Excellent at her job
- Makes \$40,000/annually

# How Should Employers Handle the Transition?



# Communication Plan

- Be prepared for questions & emotions
  - “Now I get overtime!” vs. “This feels like a demotion”
- Reiterate this is required by federal law, not a company initiative
- Explain the goal of the law is to fairly compensate employees
- Reassure employees this does not reflect performance, rank or value
- Remind employees salary threshold was only one factor
- Be prepared to discuss any changes in policies and benefits

# Administrative Tasks

- Record payroll status change
- Consider state/local notification requirements
- Update job descriptions if necessary
- Implement or upgrade timekeeping system

# Employee Training

- Train newly non-exempt employees on policies and procedures
  - Tracking time worked
  - Overtime approvals
  - Off-the-clock work
  - Mandatory meal/rest breaks, if applicable
  - Reporting changes to hours worked
- **Best practice:** Distribute a written policy (e.g. wage and hour rules for non-exempt employees) and require employee signature



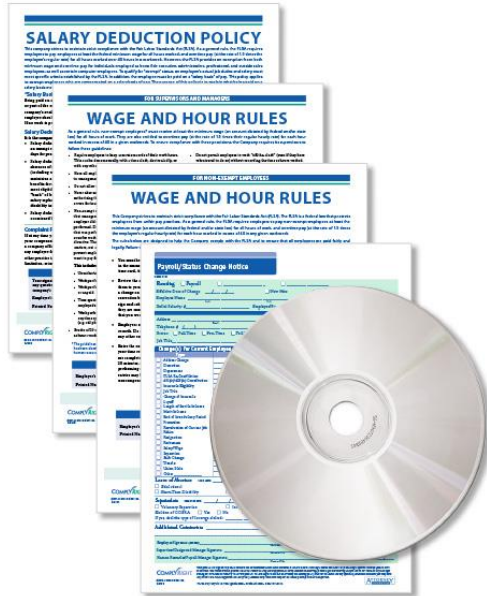
# Supervisor Training

- Train supervisors on managing non-exempt “hourly” employees
  - What counts as hours worked (e.g., travel, off-the-clock work, checking emails from home, training)
  - Handling unauthorized overtime, timesheet errors and corrections
  - How to manage mandatory meal/rest breaks
  - Avoiding retaliation
  - More “hands on” supervision and time management required
- **Best practice:** Distribute a written policy on supervisor responsibilities and require supervisor signature

# Final Tips

- Take this opportunity to conduct complete audit and clean up misclassification errors
- Review all exempt classifications
  - Document basis for exemptions
  - Update job descriptions to support classifications
- Best time to make changes without raising red flags

# ComplyRight HR Solutions FLSA Forms & Tools Kit



- Includes:
  - Initial Employee Notice of FLSA Changes
  - Payroll/Status Change Notice
  - Salary Deduction Policy
  - Overtime Request & Approval Form
  - Weekly Timesheet
  - Wage & Hour Rules for Managers and Supervisors
  - Wage & Hour Rules for Non-Exempt Employees

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