

*Ready, Set, Go!*  
**Critical Actions Every Employer Should  
Take with the New FLSA Overtime Rule**

Presented by



Jaime Lizotte  
HR Solutions Manager



Shanna Wall, Esq.  
Compliance Attorney



# What Did We Cover in Our First Webinar?

- What is the FLSA?
- How did the new law come about?
- What are the details about the changes?
- What didn't change (e.g., job duties tests)?
- What are the exceptions to the rule?
- What is the expected impact on employers?

**Every participant will be emailed a link to the first FLSA webinar.**



# What Are We Covering Today?

How to prepare for the December 1, 2016 deadline when the minimum salary for exempt employees jumps from \$455/week (\$23,660/year) to \$913/week (\$47,476/year)

## First ... a Quick Poll

How many “salaried” employees in your company will this new rule affect?

# The First Steps to FLSA Compliance



COMPLY *RIGHT.*

# Step 1: Identify Affected Employees

- Start with salaried employees earning less than \$50,000
- Keep in mind salary threshold increasing in three years (estimated to be \$51,168 in 2020)
- Consider potential fairness issues with employees slightly over salary threshold
- Evaluate potential for salary inflation

# Step 2: Gather Information on Affected Employees

- 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 Business 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?



COMPLY *RIGHT*.

# The 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

# Option 1: 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

# Option 1: Cost Impact Calculation

- Employee makes \$46,500 annually - \$894.23 weekly
- Cost to increase salary to remain exempt is  
 $\$47,476 - \$46,500 = \$976$
- Cost Impact Calculation - NO OT is  $\$894.23 / 40 = \$22.36$  per hour
- Cost Impact Calculation - with OT (5 hours OT per week)  
OT Rate is  $22.36 \times 1.5 = \$33.54$  x 5 hrs = \$167.70  
Weekly rate with OT is  $\$894.23 + \$167.70 = \$1061.93$   
Employee annual compensation with OT is \$55,220.36



# Option 1: Keep Them Exempt - Cont'd

- 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 \$45,500 annually
- Least tenured on staff
- Only team member affected by salary threshold increase

# Option 2: 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 (at **1.5x** regular rate)
- Options
  - Standard 40-hour workweek
  - Fixed work week (40 hours +)
  - Fluctuating rate

**In all instances, you must comply with recordkeeping and federal, state and local minimum wage requirements**



# 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 ( $\$400/40$  hours = \$10 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  $\$10 \times 1.5 = \$15$  per hour
  - 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 \$38,500 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 \$48,000/annually

# How Should Employers Handle the Transition?



COMPLYRIGHT.

# Converting to Non-Exempt 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

## Time for a Quick Poll

Have you distributed an initial  
FLSA communication to your  
employees yet?



# Sample Initial Employee Communication

The U.S. Department of Labor recently issued new regulations that change the way employers pay certain employees, specifically with regard to how employers classify their employees as “exempt” vs. “non-exempt” under the Fair Labor Standards Act (FLSA). The new regulations go into effect on December 1, 2016.

The FLSA is a federal law that governs the way employees are paid, including minimum wage and overtime requirements. Under the FLSA, certain employees are considered “exempt” from the law’s minimum wage and overtime requirements, meaning they may be paid a salary for all hours of work without overtime eligibility. An employee’s status as exempt vs. non-exempt depends on a variety of factors including, without limitation, the employee’s compensation level and actual job duties. The new regulations change the criteria for exempt status and are expected to affect millions of workers throughout the United States.

In response to the new regulations, our company will be evaluating whether any employees are directly affected, and will make changes as necessary to ensure compliance with the law. If you are affected by these changes, we will follow up with you and provide further instructions about your classification status on or before the law’s effective date.



# Converting to Non-Exempt: Administration

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

# Converting to Non-Exempt: 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

# Converting to Non-Exempt: 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 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 FLSA Compliance E-Solution



Contains powerful tools to help implement changes:

- **FLSA Classification Wizard:** Guides you through a series of questions to quickly determine an employee's exemption status under the new rules
- **Cost Impact Analysis:** Calculates overtime scenarios for employees converted to hourly pay to assess payroll impact
- **Salary to Hourly Conversion Calculator:** Calculates fair hourly wage with OT assumptions to maintain an employee's previous annual pay

***PLUS ... includes comprehensive, plain English guide to understanding the new regulations and all necessary downloadable forms***

# ComplyRight 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

# QUESTIONS?



COMPLY *RIGHT*.