



Overtime Changes are Coming: Will You be Ready?

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On June 30, 2015, the U.S. Department of Labor's ("DOL") proposed changes to the Fair Labor Standards Act's ("FLSA") white-collar exemption rule, which would raise the salary threshold for exempt employees from \$23,660 or \$455 per week, to \$50,440 annually or \$970 per week. The proposed change also includes automatic period increases to the salary threshold. Statistics show that, if adopted, these changes will affect approximately 4.6 million employees that are currently classified as salary-exempt, including a large number of employees in the health care industry.

The comment period for the proposed changes ended on September 4, 2015. It was initially expected that the final regulation would be announced in early 2016—however, given the voluminous number of comments received, the DOL does not anticipate issuing a final rule until July 2016. Once issued, the changes will be effective within 60 to 120 days. Health care management should thus start looking internally at their operations in order to begin to understand the potential implications of the proposed rule changes.

Below are several steps establishments can take, and pertinent questions to consider, or order to be prepared:

- Review current salary-exempt employees and identify those with a base salary of less than \$50,440 per year (i.e., at-risk of being in violation of the proposed new rules);
- Develop a strategy for those employees that are “at-risk”;
- Consider bumping up the salary-exempt employees that are close to the new salary threshold—but make sure they still meet “the duties test” (see my prior blog post)—or re-classify those employees in the “at-risk” category to non-exempt status;
- If you opt to re-classify to non-exempt status, make sure to note whether overtime will be a factor if they will be working more than 40 hours a week, and how that will impact your bottom line;
- Consider hiring additional staff in order to minimize overtime;
- Consider whether the duties required of the “at-risk” employees require checking email or taking calls outside of working hours and how this time will be tracked for those converted to non-exempt status;
- Communicate the changes to affected employees and consider the impact on those being reclassified and find ways to ensure they remain positive about their roles within the company.

There is no doubt that these changes will impact nearly all organizations and industries in the coming year. Employers should be proactive in planning and budgeting for these changes in order to ensure compliance. Further, taking adequate steps now can help minimize any potential negative implications when the new rule finally becomes effective.

This article is not offered as, and should not be relied on as, legal advice. You should consult an attorney for advice in specific situations.

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