

TICK TOCK, EMPLOYERS. IT'S TIME TO PREPARE FOR NEW OVERTIME RULES.

The new rules are almost here. After collecting nearly 250,000 public comments, the U.S. Department of Labor sent its proposed overtime rules to the Office of Management and Budget on March 14. That means Congress will likely review them for final approval within the next few months. Once the rules are in place and government enforcement begins, smart employers will be ready.

What Do the New Rules Do?

The proposed rules are an update to regulations governing which white collar workers are entitled to the Fair Labor Standards Act's minimum wage and overtime protections. Key provisions include: (1) raising the standard salary level for exemption to the 40th percentile of weekly earnings for full-time salaried workers (projected to be \$50,440 annually in 2016); and (2) establishing a mechanism for automatically adjusting the salary and compensation levels going forward. The current regulations set the standard salary level at \$23,660 per year, so the proposed jump required for an exemption is significant.

Is It Only Salary?

Salary alone is not enough to exempt an employee from minimum wage and overtime protections. The employee's primary duty must be performing exempt job functions. Each exempt job category has its own requirements and each case will be different, depending on the duties performed. Careful attention should be paid to the actual work, not what the formal title or job description says.

What Should Employers Do Now?

Employers who do not audit their employees' job duties and salary levels are likely to find themselves paying much more overtime in the coming years. The number of newly non-exempt employees will grow as the salary floor rises. Some employers may choose to redistribute work duties, adding more hours to those employees already considered exempt and limiting hours worked by the non-exempt. Another option is to raise the salary of workers who are close to the cut-off. If they already regularly work overtime, it may be cheaper to increase their yearly compensation than to pay overtime wages not previously budgeted. Of course, a cost-benefit analysis should be conducted to determine whether the salary increase would result in employer savings.

Whatever approach the employer chooses, an audit of current job functions and compensation practices is imperative. Employers must carefully examine each of their job categories, analyzing the functions performed by employees and the hours they regularly work. Job descriptions should be reviewed and compared with actual work. If job duties can be shifted from non-exempt to exempt employees, employers are wise to consider that option.

The rules are coming -- ready or not. Time to get ready.

