New Salary Exempt/Nonexempt Status Rules

Introduction

- Effective December 1, 2016 the minimum salary for exempt status will increase to $913 per week, or $47,476 per year.

Overview of exempt/nonexempt classification

Most employees must meet all three tests in order to qualify as exempt.

- **Salary level test**. Must be paid at least $47,476 per year ($913 per week).
- **Salary basis test**. Must be paid on a salary basis. Generally, an employee is paid on a salary basis if s/he has a “guaranteed minimum” amount of money s/he can count on receiving for any work week in which s/he performs “any” work. (The salary basis test does not apply to some jobs, for example, doctors, lawyers, and schoolteachers.)
- **Duties test**. Limited to employees who perform relatively high-level work. There are three typical categories of exempt job duties, called “executive,” “professional,” and “administrative.”
- http://www.dol.gov/whd/overtime/fact_sheets.htm

Steps to take now in preparation for the new rule

- Carefully review all exempt salaried positions to determine whether the positions meet the applicable duties test. **Perform an internal FLSA audit of job descriptions, and actual duties performed.**
- For current exempt positions, begin tracking hours worked on exempt and nonexempt activities.
- Evaluate whether the increase in the salary basis test will affect any classifications.
- Assess the cost impact of any changes in classification of the affected employees. Determine new hourly rates for current exempt employees transitioned to nonexempt under the new rules.

Options for responding to the changes to the salary test

- **Give them a raise.** Exempt employees earning less than the proposed salary could be given a raise to at or above the new salary level to maintain their exempt status. This is a good option for your

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employees who earn salaries close to the new salary level and regularly work more than 40 hours a week.

- **Pay them overtime.** Exempt employees earning less than the proposed salary could be paid overtime in addition to their current salary when necessary. This is a good option for employees who work 40 or fewer hours in a typical workweek, but have occasional spikes that require overtime for which employers can plan and budget the extra pay during those periods. There is no requirement to convert employees from salaries to hourly in order to calculate their overtime pay.
- **Realign hours and staff workload.** To reduce or eliminate overtime hours, employers may decide to hire new employees or redistribute work hours in excess of 40 across current staff, such as by increasing the work hours of staff who work less than 40 hours per week.

If some employees will become nonexempt, employers may set an hourly rate that keeps total pay the same. **To calculate a possible hourly rate**, multiply the usual overtime hours by 1.5 and divide the resulting total by the current salary.

For example: David, a supervisor, is currently exempt and paid a salary of $800 per week. He typically works 44 hours per week. To calculate David's new hourly rate as a nonexempt employee, multiply the overtime hours (4) by 1.5 resulting in 46 hours per week. His weekly salary of $800 divided by 46 hours gives a new rate of $17.39 per hour. During a typical week, David would be paid 40 hours at $17.39 ($695.60) plus four overtime hours at $26.085 ($104.34) for a total of $799.94.

Of course, if David takes a week off and uses 40 hours of paid vacation, he'll be paid only $695.60 that week. However, if he works 47 hours the following week, he'll get $878.20 with overtime pay. David's salary of $800 per week may not be enough to remain exempt under the proposed threshold, but this hourly rate should result in roughly the same total annual compensation, even with overtime pay.

An alternative is to make David salaried nonexempt using the fluctuating workweek method. For example, if David's salary was lowered to $770 for all hours worked, and he works 44 hours, his hourly rate would be $17.50 (or $770 divided by 44 hours). This covers straight time for all 44 hours, but he must be paid overtime, so he'd get another one-half that rate for each of the four overtime hours, adding another $35 to his paycheck, for a total of $805 that week. Under this method, David's hourly rate would change from week to week based on the hours actually worked. However, he would have to be paid the full salary even if he works fewer than 40 hours. While exempt employees can be subject to salary deductions for certain full-day absences, those deductions are not allowed from a salaried nonexempt employee.