DEPARTMENT OF LABOR'S NEW CHANGES TO THE WHITE COLLAR EXEMPTION RULE - WHAT IT MEANS FOR EMPLOYERS

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On May 18, 2016, the Department of Labor (DOL) implemented a rule that will nearly double the minimum salary necessary for a worker to be classified as "exempt" under the White Collar Exemption provision of the Fair Labor Standards Act (FLSA). These changes will impact the minimum salaries an individual must make in order to be exempt from overtime and has the potential to cost employers billions of dollars. Based upon our analysis, salaries for many management employees working in Food Service, Hospitality, Retail, and Education will likely be impacted by this change.

Now that the proposed rule is adopted and the salary threshold for the White Collar Exemption has increased, many employees could gain non-exempt status. Employers should revisit current employee duties and salary levels and determine which employees should be classified as exempt. It is important to be aware that the annual salary threshold may increase from year to year based on DOL's methodology, which could lead to employees' salaries rising or disqualifying employees from exempt status.

RULE CHANGES

The DOL has ratified three rule changes that impact who can be classified as exempt employees:

1. The increase to $913 per week, or $47,476 annually, reflects a standard salary level approximately equal to the 40th percentile of earning for full-time salary workers[1].

   Currently, the minimum salary necessary to qualify for the exemption is $455 per week. This change nearly doubles the minimum threshold amount and significantly impacts who can be classified as exempt.

1. http://www.dol.gov/whd/overtime/NPRM2015/factsheet.htm

2. Increase the total annual compensation requirement needed to exempt highly compensated employees (HCEs) to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers ($134,004 annually)[2]; and

   This rule change is to offset any individual who may lose their non-exempt status due to their individual high earnings. This exemption currently applies to an employee who earns a total annual compensation of $100,000 or more, and customarily and regularly performs any one or more of the exempt duties.

3. Establish a mechanism for automatically updating the salary and compensation levels going forward to ensure that they will continue to provide a useful and effective test for exemption[3].

   This change will actively update the minimum threshold so that as wages rise, employees will not lose their non-exempt status either by maintaining the salary levels at a fixed percentile of earnings or by updating the amounts based on the Consumer Price Index. The minimum threshold is going to be evaluated on a three year rolling basis

The Department of Labor also proposed changes to how the duties test should be implemented however, the department is not making any changes to the standard duties test as of the final rules[4].

WHO MAY BE IMPACTED?

Employers may choose to meet the new threshold requirements by increasing the salaries of currently-exempt employees or converting currently-exempt employees to a "non-exempt status" and paying overtime. All else equal, raising salaries could potentially benefit employees in food service, hospitality, preschool education, and retail supervisor's approximately $10 billion in these four job classifications alone. Other costs and regulatory issues would also be faced should employees convert exempt to non-exempt status. The following are some examples:

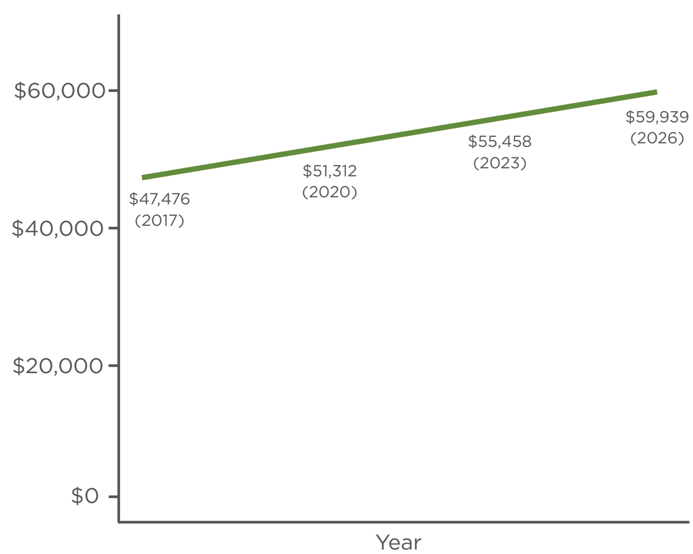
1. Overtime Payments
2. Meal and Rest Break Violations
3. Regular Rate Issues (Link to other article)

Most likely, employers may offset direct labor costs by reducing wages, changing pay structure, changing schedules or hours or even converting employees from full-time to part-time, etc.

What could happen to the threshold when DOL links the salary threshold to the 40th percentile wages every three years?

One of the rules will establish a mechanism to update salary levels to ensure a useful and effective test for exemption. DOL has implemented a link to salary growth based upon the 40th percentile wages on a three year rolling basis. Based upon average the average growth rate of wages over the past ten years, a conservative growth projection would show income thresholds will rise to $59,939 by 2029, a difference of $12,463 over 10 years[6]. This indicates that the minimum threshold could increase once every three years. Employers will need to be aware of these changes as it will continue to impact employees as the threshold rises.

INCOME PROJECTIONS (2017 - 2026)



2. Department of Labor/Wage & Hour Division/29 CFR Part 541/RIN 1235 – AA11/Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computers/pg. 76
3. Department of Labor/Wage & Hour Division/29 CFR Part 541/RIN 1235 – AA11/Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computers/pg. 77
4. "Questions and Answers - U.S. Department of Labor - Wage and Hour Division (WHD)," Department of Labor, January 8, 2002, accessed May 20, 2016, https://www.dol.gov/whd/overtime/final2016/faq.htm#1.
5. For this analysis Navigant considered the 10th percentile, 25th percentile and median annual salary of each job classification and compared the difference between those percentiles to the new minimum of $47,476. We calculated the difference between each of the percentile annual salaries and the new minimum times the number of employees within each percentile range.
6. An average percentage growth of 2.6% was calculated based upon the average wage from 2005 to 2015 http://www.bls.gov/oes/current/oes_nat.htm last accessed 5/19/2016.