

2016 Promises Big Changes to Rules for Salaried Employees

Nearly five million salaried employees could become eligible for overtime pay.

by **DAMIEN MUNSINGER** with **Barran Liebman LLP**

Big changes are coming to regulations governing salaried workers in 2016. New rules from the Department of Labor (DOL) will reduce the number of employees who may be classified as exempt from overtime regulations. The DOL estimates that nearly five million salaried workers will be affected in the first year alone.



weekly earnings for salaried employee data published by the Bureau of Labor Statistics or by referencing the Consumer Price Index. Either way, the minimum salary threshold to remain exempt from overtime requirements is likely to increase every year.

Changes may also be made to types of income included in calculating whether an employee meets the minimum salary thresholds. Currently, bonus payments of any kind are not considered. Under the new rules, the DOL may allow for nondiscretionary bonuses paid to salaried employees to count towards partial satisfaction of the updated minimum salary thresholds.

Finally, the new rules will increase the total annual compensation requirement for highly-paid employees. Currently, employees meeting minimum duty requirements and earning \$100,000 per year are exempt from overtime requirements. Under the new rules, the minimum salary will rise to \$122,148, and this figure will be subject to automatic annual increases as well.

The DOL estimates that these changes will result in a direct cost to employers of \$239.6 to \$255.3 million per year, and employees will see \$1.18 to \$1.27 billion more in their pockets.

The DOL's proposed new rules did not make any changes to the existing duties requirements, although the DOL invited the public to comment on proposed changes. One potential change under consideration is whether employees exempt from overtime requirements should be required to spend a minimum percentage of their time at work performing exempt duties. While significant changes to the duties requirements are not anticipated, employers should be aware that changes are possible. Part of the stated reason for the DOL's proposed changes is to ensure that the FLSA's intended overtime protections are fully implemented, so increased

enforcement actions may be seen after the rules take effect.

While the final rule has not yet been published, all employers should be aware that significant alterations to the pay structure of employees currently exempt from overtime regulations who make between \$23,660 and \$50,440 per year may be required. The FLSA does not exempt state or local governments, nonprofits, or small business from its rules. The final rules are expected to be published in the early 2016 and will likely become effective later in the year.

Employers should take a look at their workforce and begin planning for changes now before the rules take effect. For many employers, the new rules will require increasing the salaries of currently-exempt employees or converting currently exempt employees to non-exempt employees eligible for overtime. Employers may also need to consider operational adjustments to offset increased labor costs. Note that reclassifying employees from exempt to non-exempt status may carry a range of legal, operational, and morale implications.

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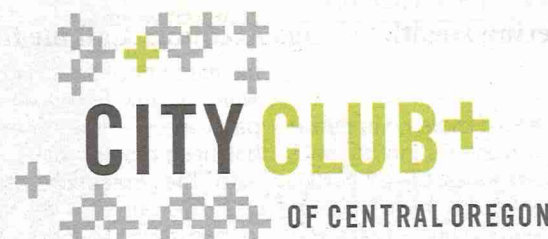
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