

## **New U.S. Overtime Rule Implementation Blocked - Practical Actions For Employers to Consider in Reviewing Employee Salaries or Wages in the Interim**

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Many employers were working diligently to ensure compliance with the U.S. Department of Labor's ("DOL") Final Overtime Rule ("New Rule") which would have raised the salary threshold from \$455 to \$913 per week, or from \$23,660 to \$47,476 per year, for the executive, administrative, and professional exemptions from the overtime rule. It was projected that 4 million U.S. workers would receive a significant raise under the New Rule. Shortly before its scheduled effective date of December 1, 2016, a Federal Judge blocked the implementation of the New Rule. The DOL has appealed the Federal Judge's ruling, which means the New Rule's future is currently up in the air and may be for some time. Because of this uncertainty, if employers have already implemented the New Rule, employers should carefully consider whether to leave the changes in place. If employers have not implemented the New Rule, employers may, at a minimum, want to confirm that the employer is accurately tracking and recording overtime in the event the block of the New Rule is lifted and compliance is required.

In any event, the New Rule still serves as a wake-up call for companies to review their compliance with current overtime laws, and ensure they have properly designated exempt and non-exempt employees. Irrespective of the New Rule, employers should still consider using the end of the fiscal year as an opportunity to re-evaluate their employees' salaries and wages as they plan for the year ahead.

Below are 6 practical pointers for an employer to consider in the interim to ensure wage and hour compliance and to help avoid potentially significant liability for wage and hour violations.

- 1. Use This Opportunity to Review Compensation Plans and Assess Exempt and Non-Exempt Job Status.**

Employers should review and reassess their employee compensation levels, re-evaluate their designations of exempt and non-exempt employees, and review their job descriptions to better align them with the needs of the business and to ensure they accurately reflect the primary duties of the job. To be exempt from overtime, an employee must meet several different tests, including being paid on a salary basis at the minimum thresholds, and performing as their primary job duties tasks that fit within one of the exempt job classifications (the Executive, Administrative, Professional, Outside Sales, or Computer exemptions). Employers should clearly define the primary duties of each job category in job descriptions and evaluate whether employees that have been designated as exempt do, in fact, meet the primary duties requirement. The duties test

is difficult to understand and implement and now is a good time to ensure compliance with the duties test.

2. **Consider Compensation Options.**

Compliance with exempt, non-exempt, minimum wage and overtime rules requires review of employee compensation plans. In addition to base wages or salaries, compensation plans may include bonuses, salary increases and other incentives. These should be crafted to motivate employees and clearly describe the components of total compensation. If some compensation components are intended to be discretionary, that needs to be clearly stated. If compensation plans are not reduced to writing, are not well defined, or are vague, they could create wage claims against an employer.

3. **Review Local and State Laws for Compliance.**

In the recent election, several states voted to increase their state's minimum wage. Thus, there is still a need to review state and local rules for changes in law in order to ensure compliance with minimum wage and overtime obligations. This is a continually evolving area of employment law that must be appropriately tracked. Employers should invest resources to fully understand and comply with wage and hour laws, including compliance with any changes that impact their workforce. Investing resources is often much less costly than facing challenges for failing to implement the required changes.

4. **Notify and Get Acknowledgements from Employees.**

If employers make changes, make sure the changes are clearly communicated to employees so that every employee affected by any new rules, policies or compensation plans are aware that his or her wages or classification will be changing. In some instances, an employer may elect to re-classify an employee from an exempt to a non-exempt position, and, as a result, the employee may need to track and record his or her working hours differently than in the past. Written notifications and acknowledgements from impacted employees will enable the employer to properly track such changes. However, if you do not want the notification or acknowledgment to create an employment contract, be sure to include an appropriate disclaimer.

5. **Manage Overtime.**

Employers may want to revisit timekeeping practices to make sure they are maintaining the records required by law and to ensure that employees understand how to accurately record time. Employees should be told to record all time worked. Employers need to properly address off-the-clock work, such as working from home or checking emails after hours. Employers may want to consider prohibiting unauthorized overtime

and require employees to obtain approval in advance for any overtime. Enforcement of any new policies adopted by the employer is key. Unauthorized overtime must still be recorded and may have to be paid.

6. **Assess Whether to Change Employees' Compensation Even Though Implementation of the New Rule is in Limbo.**

Many employers may choose this time to implement changes in their employee compensation structure. As a result of the implementation process, employers may have identified jobs that should be restructured or compensated in a different manner. The employer may be legitimately concerned about how an increase in wage costs will affect the company's bottom line. Employers may want to use this opportunity to talk to their employees about rising costs of doing business and how they can help the employer control costs. Employers may also want to take the opportunity to acknowledge and reward hard-working employees and/or to make a rate or price hike. Further, employers could use this opportunity to shift employee schedules or hours to better balance employee and employer needs or to help control employer costs.

For further guidance or information, please contact the Moye White Employment Group.



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