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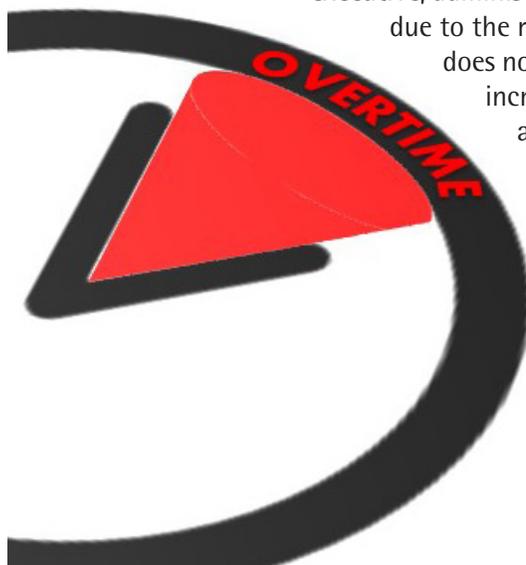
Proposed Changes To Overtime Exemption Rules Will Increase Your Payroll Expenses in 2016

Acting at the direction of President Obama to update Federal wage and hour regulations, the Department Of Labor ("DOL") has proposed new rules governing overtime exemptions for so-called "white collar" employees. The DOL has the legal authority to make and enforce these changes independently; no Congressional review or approval is needed. Once the new rules take effect in 2016, they will significantly increase employees' overtime earnings and the associated payroll expense to businesses.

The Federal Fair Labor Standards Act sets forth general wage and hour requirements, including minimum wage and eligibility for overtime pay. In general, employees must be paid one and one-half times their regular rate of compensation for any hours worked in excess of 40 in a given work week.

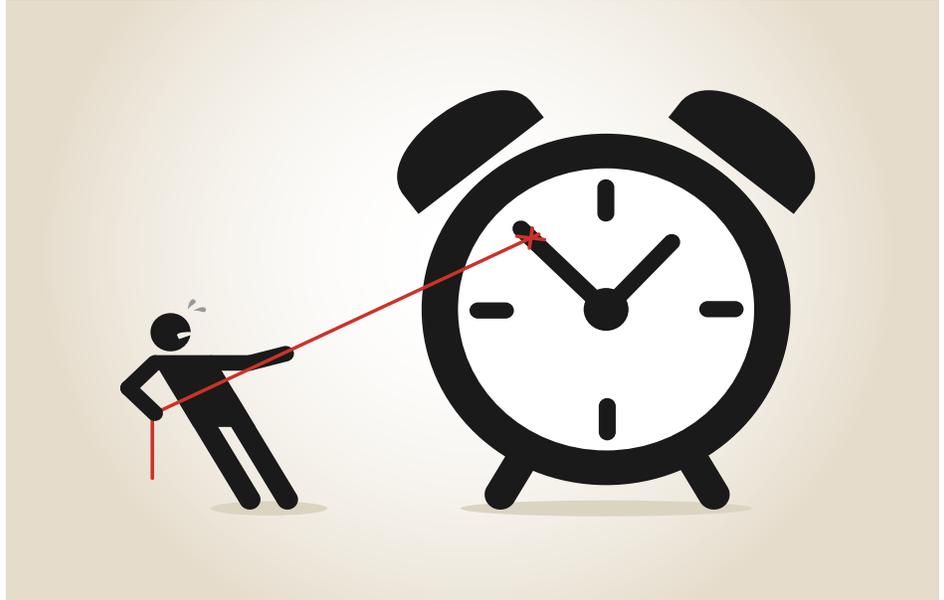
Exemptions from that increased overtime pay-rate are permitted for employees in certain carefully-defined executive, administrative, and professional roles. The exemptions are based largely upon the specific job duties those employees perform. But even where the employee meets all the executive, administrative, or professional job-duty criteria, the company must also pay the worker a certain minimum salary to trigger the exemption. If the employee is not paid a salary at or above that minimum threshold, then the company must still pay the increased overtime rate, even if the employee is typically paid on a salary basis.

According to the DOL, these exemptions were originally intended for highly-compensated executive, administrative, and professional employees. However, due to the rather low minimum salary threshold, the DOL does not believe these exemptions have kept up with increased costs of living. The result is that lower and middle management employees may be paid relatively small salaries and nevertheless remain exempt from overtime pay. For example, the current exemption salary threshold of \$23,660 per year falls below the \$24,008 Federal poverty line for a family of four. Accordingly, these white collar employees can be required to work well over 40 hours in a week, but they are ineligible to supplement



their pay for those extra hours with the increased overtime pay-rate.

The current exemption salary threshold established in 2004 is \$455 per week, or \$23,660 per year. The DOL's new proposed regulations will raise the minimum to \$970 per week (\$50,440 per year), more than double the current threshold. The increase in this salary threshold will result in fewer employees qualifying for the exemption, which means that many salaried employees who are currently exempt and working well over 40 hours per week will become eligible for the increased overtime pay-rate under the new rules. Indeed, the DOL projects that the proposed rule change will extend overtime eligibility to nearly 5 million white collar workers within the first year alone. Unlike the current regulation which has a static salary threshold, the new rules will continue to increase the minimum salary requirement every year.



The new rules are not yet final. The DOL accepted public comments on the proposed rules through September of 2015, and it is currently reviewing and considering those comments. The final rules are expected to be published sometime in early to mid-2016.

In advance of this significant change, companies are considering a number of options to remedy the expected increase in overtime obligations. Some companies are increasing salaries to satisfy the new requirements to maintain the overtime exemption for white collar employees. Others are strictly monitoring these employees' hours and limiting them to 40 hours a week or less. Others are redistributing existing work among current employees, or hiring additional employees to share the workload, while keeping each employee at 40 hours a week or less. It remains to be seen whether these proposed solutions will be more cost effective than the increased overtime expense. That will likely depend upon the particular circumstances of each workplace.

The precise date on which the new rules will take effect is not yet clear, but their impact is certain. These new rules will significantly increase payroll expenses for employers, either through increased overtime liability for workers who lose the exemption, increased salaries to maintain the exemption, or increased hiring to share work and minimize overtime hours. The new rules will also trigger a number of "soft costs," as businesses invest time and expense evaluating and implementing adjustments to their work force, and monitoring compliance.

Companies who currently use these exemptions for salaried white collar executive, administrative, and professional employees are wise to budget for these increased expenses and plan ahead to implement these changes in 2016.



Chad Willits concentrates his practice on employment law, admiralty and maritime law, insurance coverage, and general civil litigation in Ohio and Indiana. He has extensive experience and an active pre-trial, trial, and appellate practice in these areas. Chad also assists businesses and organizations with risk management and related proactive planning to prevent or resolve claims before they escalate into expensive lawsuits.