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CUT AND PASTE POST
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FINAL RULE Released:
Fair Labor Standards Act Overtime Regulations

Today, the Department of Labor (DOL) released its final regulations making changes to Part 541 governing overtime exemptions under the Fair Labor Standards Act (FLSA). SHRM is reviewing the final rule and will provide information and resources over the next few days to help you understand the changes and prepare to implement the rule in your workplace. In the meantime, here are the key elements of the new regulation that you need to know now:

1. Salary Threshold Changed to $913/week ($47,476 per Year)

This threshold doubles the current salary threshold level. While this level is slightly lower than the threshold in the proposed rule, it still encompasses many employees that are currently classified as exempt. SHRM was disappointed that DOL did not offer a more reasonable increase and set the threshold, as it has in the past, at a level designed to encompass those employees that are clearly not engaged in exempt-type work.

2. Automatic Salary Threshold Increases Every 3 Years (Not Annually) to Maintain Level at 40th Percentile in Lowest-Wage Census Region

Instead of annual increases, the threshold will be adjusted every 3 years to maintain the level at the 40th percentile of full-time salaried workers in the lowest-wage Census region. Automatically updating the salary threshold, however, does not allow the government to take into account changing economic conditions, specific impact on certain industries, or regional differences. It also denies the public the ability to have input on the threshold as required by the regulatory process.

3. Duties Test is Unchanged

DOL did not make changes to the standard duties test. The absence of a duties test change is a significant win for the thousands of SHRM members who expressed concern in this area.

4. Effective Date is December 1, 2016.

SHRM advocated for a longer implementation period than the standard 60 days and the final rule provides additional time for employers to prepare. With the rule going into effect on December 1, 2016, HR professionals should review their current workforce immediately to determine which employees are affected, whether to re-classify those employees, and execute a communications strategy. HR should keep in mind the periodic adjustments and set a regular review process.

5. Highly Compensated Employee (HCE) Exemption Is Now $134,004 Per Year
The final rule retains the methodology in the proposed rule setting the threshold at the 90th percentile of full-time salaried workers nationally.

6. Stay Tuned for SHRM Member Resources…

• SHRM Webcast – Understanding DOL's New Overtime Rule. Register Now for the Thursday, May 19, 2 p.m. ET webcast!

Major Glitches Are Still Possible

Here are a couple things that could delay or stop the new rule:

- The Congressional Review Act allows Congress to disapprove "major" Final Rules. The Act states that if a major rule is submitted to Congress with fewer than 60 session days remaining, the next Congress will have a 60-day period to consider the rule. If the DOL's overtime rule wasn't released by the OMB by May 16 (it appears it did, but it's hard to tell), the rule will "be at the mercy of" the next Congress and president.

- On March 17, House and Senate Republicans introduced legislation to stop the Rule in its tracks. The Protecting Workplace Advancement and Opportunity Act (S. 2707 and H.R. 4773) would:

  - Nullify the proposed rule.
  - Require the DOL to conduct a comprehensive economic analysis on the impact of mandatory overtime expansion to small businesses, nonprofit organizations and public employers.
  - Prohibit automatic increases in the salary threshold.
  - Require that any future changes to the duties test must be subject to notice and comment.

What to do ….

- **Figure out if you're subject to the Federal FLSA or to Montana's equivalent** - Keep in mind an employee may be subject to the FLSA even if the employer isn't. If you're not sure about coverage, contact the Montana Department of Labor, Wage and Hour Bureau.
- **Understand employees' salaries and who is currently exempt -** Identify all exempt workers with a salary below $47,476. Then, to the extent that your company relies on the highly compensated employee exemption, do the same for everyone earning between $100,000 and $134,004 per year.
- **Review and update job descriptions –** Even though the DOL did not change the duties test, it is a good time to make sure that your job descriptions are clear, and that Exempt employees will continue to remain exempt if they meet the new salary basis test.
- **Develop a strategy for managing conversions to nonexempt status -** For workers who earn close to the new minimum salary, it may make sense to raise their salaries to $47,476. Otherwise, start planning on paying them as nonexempt employees. Start by asking these questions: How many hours do these employees currently work? If you don't know, consider tracking their time. Will post-conversion pay and working hours replicate the employee's current situation, or will you need to restrict schedules at or near 40 hours? Will you base the new hourly rate on annual salary divided by 2,080 (40 hours a week × 52 weeks) and absorb any overtime expenses? Will the hourly rate assume an employee will work a certain amount of overtime?