Overtime changes

What the DOL's new overtime regulations mean for your business

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In March, the U.S. Department of Labor (DOL) issued a replacement of the controversial (and more employee-friendly) Obama-era overtime rule that was blocked by a federal judge in Texas in 2017, days before it was scheduled to take effect. The new rule brings a host of changes, including the reclassification of more than 1 million currently exempt workers as nonexempt.

Smart Business spoke with Stephen C. Goldblum, an attorney at Semanoff Ormsby Greenberg & Torchia, LLC, about what employers need to know about the new rule.

What are the new Department of Labor regulations?

The Fair Labor Standards Act (FLSA) overtime rule determines whether employees are eligible or exempt for overtime pay. Based upon their compensation and the type of work they do, exempt employees are not eligible for overtime pay for hours worked over 40 in a workweek. Nonexempt employees are eligible for overtime pay and must be paid at least time and one-half their regular pay rate for all hours worked over 40 in a workweek.

The new rule, issued in March, raises the minimum salary threshold required for non-exempt workers to qualify for the FLSA's 'white collar' exemptions from $23,660 to $35,308 per year. Above the $35,308 compensation level, employees are not automatically eligible for overtime, but still must meet certain job duties (executive, administrative, professional, computer professionals and outside salespersons) to qualify. The DOL did not make any changes to the 'duties test,' which governs whether an employee's duties fall within one of these classifications.

The new rule also increases the total annual compensation requirement for highly compensated workers from $100,000 to $147,414. That means an employee is exempt from overtime if:

1) The employee earns total annual compensation of $147,414 or more, which includes at least $455 per week paid on a salary basis;

2) The employee's primary duty includes performing office or non-manual work; and

3) The employee customarily and regularly performs at least one of the duties or responsibilities of an exempt executive, administrative or professional employee.

The DOL also proposed regular increases to the salary threshold every four years. The updates would not be automatic, but would come only after the submission of public comments.

Lastly, the new rule allows employers to include certain non-discretionary bonuses and incentive payments to comprise up to 10 percent of the new $35,308 threshold.

What is the effect of the new DOL regulations?

The DOL estimates the new rule, expected to take effect in January 2020, will result in the reclassification of more than 1 million currently exempt workers as nonexempt, and an increase in pay for others above the new threshold.

What does this mean for businesses?

Companies must determine if there are any employees who are currently exempt (ineligible for overtime) that are:

1) Making between $23,660 and $35,308 (the new minimum salary threshold) or

2) Making between $100,000 and $147,414 (highly compensated).

If there are employees in either category, they will need to be converted to non-exempt hourly employees eligible for overtime effective no later than December 31, 2019, or their salary will need to be increased to exceed the new thresholds.

A word of caution: state laws may differ from these federal regulations. For example, the Pennsylvania Minimum Wage Act does not recognize the highly compensated test or the computer professional exemption and therefore those do not apply in Pennsylvania. Therefore, a review of applicable state laws is necessary before any permanent changes are made. ●