

The New Department of Labor Overtime Rules Have Been Blocked

NOW WHAT?

By Pamela Evette



Just 10 days before they were set to go into effect on Dec. 1, new Department of Labor (DOL) regulations governing the mandatory payment of overtime have been blocked. These regulations would have required major changes in the way companies do business, assign duties, and approach hiring and payroll management. Not surprisingly, many companies were not ready for this dramatic change, especially considering the tight 6-month timeframe from the announcement of the new rule and its implementation deadline.

While this ruling may be extremely beneficial for the companies who were unprepared for the transition, the situation could be a bit stickier for those who have already reclassified workers or made changes to compensation packages to meet these new regulatory requirements.

Regulatory History

The DOL's Fair Labor Standards Act requires that covered employers pay "non-exempt" employees overtime pay for any time worked over 40 hours in a workweek. An employee is "exempt" from overtime requirements if they meet certain duties tests, including the minimum salary threshold. Previously, the minimum salary threshold was \$23,660 per year (\$455 per week).

This summer, the DOL announced new regulations that sought to raise the minimum salary threshold to \$47,476 per year (\$913 per week). The salary threshold, which was set to increase every three years, would apply regardless of whether an employee is classified under the professional, administrative, or executive exemption ("EAP exemption"). This would have been the first time the salary level had been raised since 1975, when the threshold of \$23,660 salary covered 61 percent of workers. The DOL estimates that this increase would have extended overtime protections to approximately 4.2 million workers, including an estimated 156,000 workers in South Carolina.

On November 22, a U.S. District judge ruled in favor of 21 states who filed an emergency motion for a preliminary injunction in October to halt the rule. These states, along with a coalition of business groups, including the U.S. Chamber of Commerce, argued that the overtime rule was unlawful, claiming the DOL exceeded its authority by raising the salary threshold too high and by providing for automatic adjustments to the threshold every three years.

Reclassification and Salary Changes

Many employers had already addressed the reclassification of workers through a careful compensation and duties analysis for all employees with a current base salary below the new threshold. A large number of employers opted to take the simplest route to compliance by offering raises to those who were previously considered "exempt" and earned a salary within a few thousand dollars of the threshold. Others decided to classify workers as either salaried non-exempt or hourly non-exempt based on the duties test and pay them overtime whenever they work over 40 hours.

Many have also invested in time and attendance systems to

help track hours, adopted new after-hours and off-the-clock work and phone/email and implemented work policy changes.

For Those Who Made Changes

For now, the injunction means that businesses will continue to follow the existing overtime regulations, but it's important to remember that even though these new rules will not take effect as planned Dec. 1, they could still be implemented later down the road. This means that any work invested to date has not been lost. Companies who have gone through this exercise will undoubtedly benefit from having a better understanding of time and attendance and more clearly defined policies and practices related to job descriptions, overtime, work hours and after-hours activities and expectations.

If your company has already provided salary increases so employees can maintain their exempt status, it's best to leave these decisions in place. Backing out of these new agreements would be difficult and could potentially harm morale and employee engagement. However, if there are exempt employees who were going to be reclassified to nonexempt, but haven't been reclassified yet, it is best to postpone those decisions until a final ruling has been made.

For Those Who Were Not Prepared

Rather than declaring victory and moving on to the next task, smart employers will continue to assess their classification processes, applying economic analysis and duties tests to each of their future hiring and promotion decisions and continuously monitoring current workers to ensure compliance if and when the time comes. They will also plan for possible future salary threshold increases by identifying the next group of impacted employees.

As with any prospective major organizational change, frequently communicating and preparing for possible changes will give companies a

distinct long-term advantage.

Help is Still Available

There are several excellent resources to help employers navigate best practices. The Society of Human Resource Management (SHRM) offers a compliance guide: <http://bit.ly/29ADRHx>. The U.S. Department of Labor has also published guidance for employers on their website: www.dol.gov/featured/overtime.

If your company has not already done so, it may still make sense to bring in a consultant to help identify possible problem areas and conduct the analysis necessary to successfully deal with the implications of this rule if it does eventually take effect. While the clock has stopped ticking and the sense of urgency is much less acute, there is still much to be done, and being armed with the right information can make things much easier for your organization regardless of the outcome of this regulation..

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