

Is Your Organization Ready for the Updated Overtime Pay Rule?

September 27, 2016

Panelists



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The New Federal “White Collar” Overtime Rules: How Your Nonprofit Can Comply

September 27, 2016

FLSA Coverage of Non-Profits

Under the FLSA, nonprofits with gross revenues over \$500,000 (commercial activity, not donations) are covered. In addition, the following are covered regardless of revenue:

- hospitals

- residential institutions caring for seniors or the disabled

- schools for disabled or gifted children

- preschools, elementary, or secondary schools

- institutions of higher education

Individual employees engaged in interstate commerce are covered:

- order or receive goods from out of state

- receive email or mail from out of state

- make phone calls out of state

- handle credit card transactions

Who Is An Exempt Salaried Employee?

Employees must meet three conditions:

Primary duties are defined as exempt

Are paid a salary of at least \$913 per week

Are paid on a salary basis.

Salary alone is never enough to exempt an employee.

Exempt Duties

The exemption is often referred to “EAP”, for Executive, Administrative, and Professional duties.

Executive: Primary duty is to manage the organization or a department and to regularly supervises at least 2 full-time employees or their equivalent.

Administrative: Primary duty is the performance of work directly related to general business operations of the organization that requires the exercise of discretion and judgment in matters of significance to the organization. Can not be a production worker.

Professional: Primary duty is the performance of work requiring advanced knowledge acquired through a prolonged course of specialized intellectual instruction or artistic skill and must exercise discretion and judgment.

The Salary Basis Test

An area where employers do comply and lose the exemption.

Exempt employees must be paid same weekly salary,
regardless of how many or how few hours they work

The FLSA provides for a limited number of pay deductions,
without loss of exemption.

Any other deductions violate the “salary basis” requirement
and cause loss of the exemption

Can not generally reduce pay for partial day absence or to
discipline an employee

How to Administer the New Regulation

Review all jobs currently classified as EAP exempt.

Do the employees' actual duties meet the exemption.

Can't rely on a position description

Update job descriptions to accurately reflect duties

Ensure the salary basis test is met

Pay a weekly salary of at least \$913

Ensure compliance with any state law

Nondiscretionary bonus and incentive pay may be counted up to 10% of the salary threshold (\$821.70) but only if paid at least quarterly

Must still pay a salary of at least \$42,728.40

National Employment Law Project

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Overtime Rule's Impact on Nonprofits

What are some options
for responding to changes to the salary level?

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graph TD; A[What are some options for responding to changes to the salary level?] --> B[Raise salaries to maintain exemption]; A --> C[Pay current salaries, with overtime after 40 hours]; A --> D[Reorganize workloads, adjust schedules or spread work hours]; A --> E[Adjust wages];
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**Raise salaries
to maintain
exemption**

**Pay
current salaries,
with overtime
after 40 hours**

**Reorganize
workloads, adjust
schedules or spread
work hours**

Adjust wages

FLSA Overtime Rules: Compliance Strategies for Non- Profits

Presented by:
Anne Babcock-Stiner, Esq.
Sr. Vice President of Human Resources
PathStone Corporation

PathStone Corporation

- PathStone's mission is to build family and individual self-sufficiency by strengthening farmworker, rural and urban communities. PathStone promotes social justice through programs and advocacy.
- PathStone is a visionary, diverse organization empowering individuals, families and communities to attain economic and social resources for building better lives.

PathStone Corporation

- \$65 million operating budget
 - 95% federally funded
 - Majority of federal funds come from DOL ETA
- Operations in 7 states and Puerto Rico
- 15 lines of business:

Community, Economic & Direct Services:

Employment & Training

Child & Family Development

Emergency & Supportive Services

Housing Choice Services

Health & Safety

Real Estate Development:

Affordable Rental Housing

Small Business Lending

Weatherization, Home Rehabilitation

Homeownership Services

PathStone Corporation

- 589 year-round and seasonal employees
- 463 employees earn less than the \$47,476 overtime threshold
 - Many are already classified as non-exempt based on job duties
 - 42 employees have exempt job duties, but have salaries lower than the \$47,476 threshold
 - Annual cost to raise salaries of 42 employees: \$267,505

PathStone's Approach

- Increase salaries
- Realign job duties
 - Limit transfer of duties to employees who just received a pay increase to maintain their exemption status
 - Be careful that the transfer of job duties doesn't jeopardize the exemption status of the employee to whom duties are transferred
- Pay Overtime
 - Focus on work-life balance
 - Employee wellness, recruitment and retention
 - Be more efficient
- Pay attention to mission
 - If we would advocate for this change for the low-wage workers we serve, we should advocate for it with our own low-wage workers

What to Do?

If you currently have exempt employees that earn between \$23,660 and \$47,476 annually, here are three options to consider when determining how to comply with the new salary requirements.

Use this calculator to estimate the potential impact of the rule on an individual employee's pay based on the information you input.

What is the employee's current annual base	\$23,660.00
On average, how many hours over 40 do you estimate that the employee works per week?	<input type="text"/>
Hourly rate equivalent based on a 40 hour workweek:	\$11.38
Estimated annual overtime hours worked:	0
Hourly overtime pay:	\$17.06
Total estimated annual overtime earnings:	\$0.00

Option A

Reclassify the employee as non-exempt and start paying overtime. The estimated impact to your annual payroll based on this employee's salary change will be:

\$0.00 per year

Option B

Meet the minimum salary of \$47,476 and increase the employee's salary by:

\$23,816.00 per year

Note: Beginning December 1, 2016, employers may use nondiscretionary bonuses (generally defined as those announced or promised in advance), incentive payments, and commissions, to satisfy up to 10 percent of the minimum salary requirement for the administrative, professional, and executive exemptions, as long as these forms of compensation are paid at least quarterly. This calculator doesn't factor in these other forms of compensation when estimating the costs of Option B.

Option C*

Factor in overtime and keep your labor costs about the same. Reclassify the impacted employee as non-exempt and adjust the employee's hourly rate to account for the expected overtime hours:

\$11.38 per hour

* Click on the **Reference Guide** in the tab below for more information on Option C. Remember, whatever hourly rate you decide to pay reclassified employees, it must meet or exceed the highest applicable minimum wage (federal, state, or local). If the result above is less than the applicable minimum, you would need to raise the rate of pay to meet the requirement.

This calculator is designed to provide general guidance and estimates only for the purpose of assessing the approximate impact of the new FLSA overtime rules on your business or a given individual, and does not constitute legal or tax advice. The calculator provides an estimate of the cost impact if changes are made to employee pay. It is not meant as any indicator as to whether an employee should be classified as exempt or non-exempt. Please refer to a professional tax or legal advisor regarding specific requirements or concerns. ADP does not recommend any particular option or options, and leaves those decisions to the discretion of your organization. This calculator provides a general assessment based on your current employee classifications and makes no representations as to the accuracy of your current classifications. Actual impact may vary based on differences between the options and assumptions used, and circumstances with your organization or certain individuals. Copyright © 2016 ADP, LLC. ALL RIGHTS RESERVED.

← Input data based on 52 weeks

← Input data

“I went to law school because they told me there wouldn't be any math.” -Me

Things to Consider

- Can you increase the use of volunteers?
 - be aware that volunteers should not displace employees or perform work that would otherwise typically be performed by employees
 - Paid employees may not volunteer to provide the same type of services that they are otherwise employed to provide

Things to Consider

- Will cross-training staff enable you to shift job duties as the need arises?
- Are your staff engaged in activities that are not directly related to your mission?
- Can you utilize technology to be more efficient?

Resources

- Guidance for Non-Profit Organizations on Paying Overtime under the Fair Labor Standards Act; Department of Labor Wage and Hour Division; May 18, 2016
(<https://www.dol.gov/whd/overtime/final2016/nonprofit-guidance.pdf>)
- Calculating the Impact of Changing from Exempt to Non-Exempt
(<http://sbshrs.adpinfo.com/flsa>)

Thank you!