



U.S. Department of Labor's New Overtime Rules

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by

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That rumbling you may have felt this week wasn't another Oklahoma earthquake. It was the reaction of employers to the new overtime regulations just released by the U.S. Department of Labor ("DOL"). Set to take effect December 1, 2016, the new regulations will have seismic impact on employers. It is estimated that 4.2 million more Americans, including almost 50,000 Oklahomans, will be entitled to overtime compensation of 1.5 times their regular rate of pay for each hour they work over 40 hours in the work week.

The Fair Labor Standards Act ("FLSA") is the federal law that dictates which employees must be paid overtime. There are six "white collar" exemptions to the requirement that employees receive overtime pay. The most used is the "Administrative Exemption." It typically includes employees who lead others, like office managers, but misunderstanding abounds. Each exemption has two tests an employer must meet to avoid the overtime requirement, a salary test and a duties test.

The most significant change made by the new rule raises the salary test threshold from \$455 per week or \$23,600 annually to \$913 per week or \$47,476 annually. Now, employees subject to the salary test who are paid less than \$913 per week or \$47,476 annually can no longer be classified as exempt and must be paid overtime compensation. Additionally, the salary test for the Highly Compensated Exemption is now \$134,004 per year.

Making matters even more financially and administratively challenging for employers, the new salary threshold is subject to review every three years. Employers should plan to periodically review the regulations and employee salaries and duties to identify those employees who may be impacted by further adjustments to the salary threshold.

Employees who will be reclassified as non-exempt and entitled to overtime will need a system in place to accurately record all of the hours they actually work for purposes of determining entitlement to and proper calculation of overtime wages. Employers need to be sure they understand the types of compensation (such as shift premiums, commissions, and bonuses) that must be included in an employee's regular rate of pay when calculating overtime compensation. Employers also need to be careful to properly train managers on how to ensure nonexempt employees are following the proper timekeeping procedures to avoid costly wage claims.

Employers should review their current employee classifications, timekeeping policies and practices, and overtime policies to ensure compliance by December 1 and to avoid exposure to significant legal risk. Failure to comply could expose employers to criminal and civil penalties and civil suits for back wages and liquidated damages. Employers should also comply with FLSA recordkeeping requirements, effectively communicate any changes to affected employees, and maintain clear policies relating to overtime.

In the coming months, GABLEGOTWALS will release more detailed information about these changes, as well as guidance for employers to evaluate their current classifications and overtime practices to insure compliance, limit potential exposure, and manage expectations in the workplace. We look forward to navigating these changes with you. In the meantime, if you have questions or need counsel on this issue, please contact your GableGotwals attorney to be put in touch with one of our Labor and Employment attorneys.