Will new overtime rules give you a raise? Or a demotion? - AvvoStories

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For the first time in 40 years, rules governing exemptions to the Fair Labor Standards Act have been overhauled, and the impact could be significant. Beginning December 1, 2016, the salary threshold for overtime eligibility will rise for all workers, regardless of their job title. This could mean a raise for up to 4.2 million people—or possibly, a demotion.

So how might the new rules affect you?

What are the rules right now?

Under the current federal rules, hourly employees are almost always eligible for overtime pay when they work more than 40 hours in a given week. Salaried employees, however, are rarely eligible. Managerial and professional positions are traditionally salaried, and those employees, the logic goes, are expected to work as long as the job takes in exchange for additional flexibility and benefits packages.

The more hours of overtime a salaried worker puts in, the less that worker costs the company per hour, giving employers a strong financial incentive to classify employees as “managers” (although in reality, their actual managerial responsibilities may be minimal, or even non-existent).

Recognizing that many salaried or seasonal positions, particularly in the retail and food service industries, may not actually offer the supposed benefits of salaried positions, there is a minimum threshold for overtime exemption. In 1975, the threshold was set at $8,060 and ensured that 62 percent of workers were eligible for overtime. Last updated in 2004, the minimum salary that can be classified as overtime exempt today is $23,660 and covers only about seven percent of salaried employees.

At $23,660 per year, an employee working full time makes $11.33 per hour. Add five hours of weekly overtime, and the hourly rate drops to $10.08. Ten hours of weekly overtime drops the pay rate to $9.07—less than minimum wage in eight states and the District of Columbia. That sliding scale obviously incentivizes companies to avoid paying overtime; in fact, Chipotle and several other companies have faced lawsuits charging them with inflating job titles to deny workers overtime eligibility.

What are the new rules?

Beginning in December, salaried workers making less than $47,476—double the current limit—will be entitled to overtime pay for any work over 40 hours per week. To skirt the new limit, some critics are claiming that employers will simply respond by cutting hours and hiring more employees, or by reclassifying workers as hourly at the lower pay rate (hence, the aforementioned demotions). While some employers are certain to try both of these strategies, others will raise salaries to the new threshold.

However employers choose to respond to the new rules, they will have six months to achieve compliance. Although the new rules are largely a response to the perception of shadiness on the part of large corporations, they apply to all workers, regardless of the size of the employing company. Hence, small businesses may benefit from professional financial and legal counseling to determine the best strategy for complying with the new rules.

What will it mean for you?

According to White House estimates, 4.2 million employees will be affected by the change, which could generate an extra $12 billion in wages. Salaried employees should consider doing the following as the changes in December approach:

1. Check with their HR departments to find out if their position is affected.
2. Do the math to figure out if reclassification to hourly overtime-eligible status—or a salary bump to meet the new exempt threshold—would result in higher actual pay.
3. If necessary, advocate for the most beneficial pay structure, and be prepared to take legal action if their employer doesn't meet the six-month deadline.

Although the new income cap is the most attention-grabbing, other elements of the legislation may have more long-term significance.

- Historically updated on an ad hoc basis (and very infrequently), the income threshold will now be updated automatically every three years. It will be maintained at the 40th percentile of full-time salaried workers in the lowest income region of the country. It is expected to rise above $51,000 with the first update on January 1, 2020.

- The "highly compensated employee" threshold, over which only a minimal showing is needed to demonstrate that an employee is not eligible for overtime, is also rising—from $100,000 to $134,004.

- In a concession to opponents to the changes, employers will now be able to count bonuses and commissions toward as much as 10 percent of the salary threshold.
- The duties test to determine eligibility for overtime will remain unchanged. This means that an employee who is not in a professional or managerial position, but who earns more than $47,476, will still be eligible for overtime.

For more information, consult the Department of Labor's website on the matter.

Tagged employment, small business

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