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Big Change Is Coming: The Impact And Risk New Overtime Rules Present Employers

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Unlike many regulatory changes, the Department of Labor's (DOL) proposed changes to the overtime rules, at President Obama's direction, will touch most employers and will impact millions of employees as well as some of the unemployed.

The change is simple. Employees whose salary is \$50,440 or less receive overtime no matter what they do for your workforce. So if you have a manager who makes \$50,000, he or she receives overtime.

<http://www.latimes.com/business/la-fi-obama-overtime-rules-explainer-20150630-htmstory.html>

The original threshold amount was \$23,660 and was meant to cover the working poor. Depending on where you live, the new rules would cover more than the working poor. According to the site [averagesalary.com](http://www.averagesalary.com), the official average salary gross in the United States is under \$50,000. <http://www.averagesalarysurvey.com/united-states>

The DOL is not making specific proposals to modify the standard duties tests; however, the DOL is seeking comments on whether the standard duties tests are working as intended to screen out employees who are not bona fide white collar exempt employees.

Proponents of the rule argue that it is time that the middle-class gets a raise.

Opponents argue the proposed rules will actually hurt the workers the rule changes are meant to help.

So, how will it play out for employers?

Skilled, previously non-exempt, employees who are crucial to an employer's operation will either work fewer hours (40 or less) or will receive overtime. Employers are unlikely to cut the hours of employees they view as indispensable.

Others will see their hours managed not to receive overtime or will see their hours cut to part-time. When you factor in that Affordable Care Act eligibility is 30 hours or more, you can expect employers who are not exempt from the ACA to cut hours to less than 30 to avoid paying for health insurance and the overtime.

Finally, some employers will layoff employees to make room for the budget impact of paying indispensable employees time and a half.

As for the human impact, the proposed rules will hit lower and middle management employees the most. In addition to the above, previously exempt employees will need to "clock in" and "clock out" and will lose time when they go to the doctor or have a family emergency, a coveted financial benefit of being part of management.

The new rules will hit certain industries harder than others, including retail, food, and other service industries. The same industries that are often the starting point for the long-term unemployed to reenter the workforce or for young workers to begin their working careers will be affected the most.

Perhaps the greatest impact is the risk the proposed regulations will create for employers. The rule change is a 113 percent increase in the threshold and is estimated to impact 5 million employees. The more workers eligible for overtime, the more increase in the risk of claims for failure to pay overtime.

Failure to pay overtime claims is one of the fastest growing liabilities in the United States today and other claims related to failing to pay overtime will increase as well, including retaliation charges.

Retaliation and failure to pay overtime are often filed together. The argument is that a terminated employee was wrongfully terminated in retaliation for complaining about being owed overtime or whistleblowing about overtime compliance.

Beyond the day-to-day impact, there is a long-term play on the economy as well.

Wage growth in the United States is anemic. The recent job numbers saw projected wage growth fall to 2 percent.

http://finance.yahoo.com/news/wage-growth-dips-participation-drops-223300954.html;_ylt=A0LEVi3AYZVVEy4AyQ8nnlIQ;_ylu=X3oDMTByMjB0aG5zBGNvbG8DYmYxBHBvcwMxBHZ0aWQDBHNIYwNzYw-

Our present workforce participation numbers are the worst since October 1977. <http://www.bloomberg.com/news/articles/2015-07-02/this-is-why-participation-in-the-american-workforce-has-plunged-to-its-lowest-since-1977>

While our unemployment rate is at a low of 5.3 percent, the underemployment rate, the rate of unemployed and persons who are working part-time, but want full time work, is still high at 14.7 percent. <http://www.gallup.com/poll/125639/Gallup-Daily-Workforce.aspx>

The new decision will most likely drive down further the unemployment rate as employers add more part-time jobs, but it will also add to the underemployment rate as full-time workers are made part-time. Ironically, wage growth, the reason for the decisions, will be marginal as employers simply adjust the hours that employees work versus paying more overtime.

On the other hand, more long-term unemployed that are made part-time will lower the costs of unemployment benefits, but also increase



revenue from payroll taxes.

Is there more to come?

Possibly. The Obama Administration states that it is also reviewing exemptions to overtime. If the exemptions are narrowed, then more employees making over \$50,440 will be eligible for overtime.

So, what can you do today?

The rules will not go into effect until there is an official comment period. When the comment period becomes available, you should participate. Additionally, contact your Congressional representatives and your associations so they can hear your voice.

Beyond that get prepared...

- ✓ Determine which employees will be affected.
 - ✓ Determine how many hours these employees work on average.
 - ✓ Determine the budget impact to your organization and the business course you need to take.
 - ✓ If the rules go into effect, speak with those impacted and that they must "clock in" and "clock out" and that time off the clock is no longer compensated.
 - ✓ Review your rules about overtime especially the rules regarding providing notice before overtime is granted.
 - ✓ Train management on the rules with special attention that retaliation for working overtime is not permitted.
 - ✓ Train management that if an employee works overtime without permission that the employee must be paid, but can be disciplined for failure to provide notice.
 - ✓ If notice is in dispute, then do not discipline or terminate the employee, but focus on your procedures to prevent mistakes and miscommunication.
 - ✓ Discuss the issue with your employment counsel.
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