

They're Here! New DOL Salary Requirements for Exempt Employees

North Dakota State Human Resources
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Presented by:
Elizabeth L. Alvine

Fredrikson
& BYRON, P.A.

Background

- The law
 - Fair Labor Standards Act (federal)
 - State law

Background

- Non-exempt
 - Record hours worked
 - Must pay at least minimum wage for all hours worked
 - Must pay overtime at 1.5x regular rate of pay for all hours worked over 40 in workweek

Background

- Exempt
 - Need not record hours worked
 - Not entitled to overtime pay
 - Must qualify for exempt status under at least one exemption based on duties
 - Must be paid a salary
 - Exception for computer professionals

Background

- Primary FLSA Exemptions
 - Executive exemption
 - Administrative exemption
 - Professional exemption
 - Computer exemption
 - Highly compensated exemption

Highly Compensated EEs

- \$134,004 total annual compensation (with weekly salary of \$913), *and*
- At least one exempt duty

What's New as of 12/1/16

- Exempt Employees:
 - No change in the required job duties
 - BIG change in the required salary

New Required Salary

- As of 12/1/16:
 - Annual Salary: \$47,476
 - Weekly Salary: \$913
 - Bi-weekly Salary: \$1,826
 - Semi-monthly Salary: \$1,978
 - Monthly Salary: \$3,956

New Required Salary

- Up to 10% can be
 - Nondiscretionary bonuses
 - Incentives
 - Commissions
- Which must be paid
 - No less than quarterly
 - No later than first pay period after end of a quarter

New Required Salary

- Must receive the minimum weekly salary amount (\$913)
- Exempt EE also may receive additional pay:
 - Commissions
 - Percentage of sales or profits
 - Extra pay for extra hours worked

New Required Salary

- The new salary amount:
 - Based on the “40th percentile of weekly earnings of full-time nonhourly workers in the lowest-wage Census Region, exclusive of board, lodging or other facilities.”
- DOL will update beginning 1/1/20 and every 3 years thereafter

New Required Salary

- Salary basis rules still apply:
 - No deduction for quality or quantity
 - Full weekly salary regardless of hours worked (unless exception applies)
 - No salary for week if perform no work
 - No deduction for ER-caused absences

Exceptions: Permitting Deductions from Salary

- Full day absences due to:
 - Personal reasons unrelated to illness or disability
 - Sickness or disability covered by paid sick, disability, workers' compensation, or other leave policy/program
 - Unpaid disciplinary suspension for violation of workplace conduct rules

More Exceptions

- Full or partial day deductions due to:
 - First or last week of employment - pay proportionate to time actually worked
 - Leave under FMLA –pay proportionate to time actually worked
 - Penalty for violation of a major safety rule
- Offset fees received for jury duty, witness duty, or military service

New Required Salary

- Be sure you include in the employee handbook/personnel manual:
 - Safe harbor language regarding inadvertent deductions to the salary of exempt EEs

New Required Salary

- Applies to both FT and PT
 - Example:
 - Physical therapist works 2 days/week for 16 total hours
 - Currently paid weekly salary of \$800
 - Under the new salary rules, must be paid \$913/week or converted to “salaried, non-exempt” and track hours and receive OT after 40 hours

Next Steps

- Assess and audit current practices
- Consider options and determine action items
- Communicate to affected employees

Next Steps

- Privileged audit of:
 - exempt/nonexempt classifications
 - current compensation
 - assess economic impact
 - timekeeping processes
 - bonuses and commission payments
 - review of policies

Action Items and Options

- Update/correct practices based on audit results
 - Timekeeping, breaks, off-site work, misclassification based on duties, etc.
 - Dec. 1 opportunity to correct with potentially fewer red flags

Action Items and Options

- **Reclassification as nonexempt**
 - Reclassification may be required
 - Can continue to pay salary, change to hourly (or other method), but must pay overtime
 - Must track hours worked

Action Items and Options

- Continue exempt status
 - Increase salary
 - Consider nondiscretionary bonuses and commissions
 - Process for future salary adjustments
 - State law considerations

Factors To Consider

- Financial impact
- Travel time
- Comp time
- Off-hours work
- Administrative burden
- Perception by employees

Communication

- Review and revise policies
 - Communicate and enforce policies prohibiting off-the-clock work, unauthorized overtime by nonexempt employees
- Reclassified employees
- Other employees

Litigation Risks

- **Costs of Getting It Wrong:**
 - Back wages – up to 3 years
 - Liquidated (double) damages
 - Attorneys' fees and costs
- **Class/collective actions**

Thank You

Presenter



Elizabeth L. Alvine
Fredrikson & Byron, P.A.
701.237.8217
ealvine@fredlaw.com