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

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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