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FLSA Update FAQ's

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The U.S. Department of Labor (DOL) has released updated rules regarding which employees can be exempt from overtime under the Fair Labor Standards Act (FLSA). Beginning December 1, 2016, employees will not only have to meet one of the exemption tests set out in the FLSA, they must also earn at least \$47,476 annually (\$913 weekly) to be classified as exempt.

FLSA

FAQ's from our HR Hotline.

Salary Level

Q: Does this mean that anyone who makes more than \$47,476 a year can be exempt?

A: No. The employee must also meet the duties requirements of one of the exemption tests set out in the FLSA, which include the executive, administrative, professional, outside sales and computer professional tests. (Note that based on the Illinois Minimum Wage Law (IMWL), Management Association recommends that Illinois employers not solely rely on the computer professional test in making an employee exempt.)

Q: With the new threshold for "highly compensated employee," can we consider a person who makes at least \$134,004 exempt regardless of their duties?

A: Not if the employee is in Illinois. Illinois doesn't recognize the highly compensated employee exemption in the FLSA based on the IMWL. Other states may have similar provisions, so before relying on the highly compensated employee exemption, check that state's rules.

Q: We have an exempt employee whose full-time salary would be \$50,000 a year, but he works 3 days a week so we prorate his salary to \$30,000 (60% of full-time). What happens in this situation?

A: The employee can no longer be exempt if he earns a yearly salary below \$47,476, regardless of his schedule. There are no exceptions in the rule for exempt employees working a prorated week. You will either need to make the employee non-exempt or pay at least \$47,476 for the part-time schedule.



Bonuses

Q: Please explain the new “bonus” component, and how we can use a bonus to satisfy the new salary level.

A: Rather than pay an exempt employee \$913/week, employers can compensate employees at a lesser rate and make up the difference through a quarterly (or more frequent) bonus. The bonus can't exceed 10% of the standard salary requirement, however, and according to the DOL, it must be a non-discretionary bonus or an incentive payment, like a commission.

Other Conundrums

Q: We have a particular job that hovers around \$47,476 as a yearly salary. Some employees make more, some make less. Are we allowed to have some employees classified as exempt and some as non-exempt within the same job title?

A: It's allowable under the FLSA, but we don't advise it. We suggest either making all people with the same title exempt or non-exempt so all employees with the same job title are treated similarly.

What Happens Next

Q: The jump to \$47,476 essentially doubles the current salary minimum of \$23,660. Is this going to go up again soon?

A: The new rule provides for an adjustment to the salary threshold every 3 years. The next scheduled change is January 1, 2020. It will be based on the 40th percentile of weekly earnings of full-time workers in the lowest Census Region of the U.S.

Q: Won't this all go away, depending upon who wins the Presidential election in 2016?

A: While we may see some minor changes, these rules are most likely here to stay regardless of the outcome of the election.

Q: We have employees asking how this is going to affect them. How should we respond if we haven't yet determined our action plan?

A: We suggest responding with acknowledgment and understanding. That means saying something along the lines of, "We are aware of the change in the law. Be assured that we are working on how this will affect you. We know your job and compensation are important, and we are therefore taking the time to make sure we do this right."

Q: Should we tell managers to direct people to HR?

A: It's better to have your managers give the response above, rather than referring them to HR. This means educating managers now and coaching them on what to say until you can assemble your team and determine next steps.

Q: What are the next steps? What should we do?

A: To start, we suggest you determine who needs to be involved – the C-Suite, HR, general management and perhaps others – and create a team, along with a leader. Next, determine which employees will be impacted, and decide how best to handle each position. Finally, develop a communication plan that will be rolled out in a timely manner.



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- **Call our HR Hotline at (800)448-4584 or email us at info@hrsourc.org.**
- Schedule training not only for yourself, but also for your managers.
- Engage our team of compensation professionals to review job descriptions, perform FLSA analysis, recommend compliance strategies, draft and deliver communication plans, and more.