

# Preparing For the New FLSA Regulations: Deadline December 1st

Presentation by  
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# What is the FLSA?

The Fair Labor Standards Act (FLSA) is the Federal law governing minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

# Minimum Wage

- The Federal minimum wage is currently \$7.25 per hour effective July 24, 2009.
- Maryland's minimum wage is \$8.75 effective July 1, 2016 and increasing each year.
- Baltimore City Council recently proposed a hike in minimum wage to \$15.00, but it did not pass.

# Overtime

***Non-exempt employees*** are required to be paid one and a half times their regular rate for all hours worked in excess of forty hours in a given week

- Overtime eligibility is determined on a weekly basis
- Flex time and compensatory time are only permitted for non exempt employees if occurring within the same work week.

# Hours Worked

“Hours worked” are hours “suffered or permitted” to be worked by an employee.

- May include things like training time, travel time, and waiting time
- Not all paid time counts toward the 40 hour threshold
  - Examples: PTO, sick leave and vacation time

# Exempt/Non-Exempt

- ***Exempt Employees*** are not required to be paid overtime for hours worked in excess of 40 in a given workweek. Current minimum salary is \$455/week or \$23,660
- ***Non-Exempt Employees*** must be paid at least minimum wage and overtime for all hours worked in excess of 40 in a given workweek

# FLSA Exempt Classifications

- Administrative
- Executive
- Professional Employees
- Computer Professionals
- Outside Sales
- Highly Compensated Employees

# Classifying Employees as Exempt or Non-Exempt

## HOW TO ENSURE COMPLIANCE

- Review position descriptions and duties
- Discuss actual duties being performed with employee's supervisors
- Employee job surveys
- Begin tracking work hours now
- Use DOL regulations to track language in job descriptions



# FLSA Enforcement

## **The FLSA gets enforced 2 ways**

1. Department of Labor audits/  
investigations, followed by a lawsuit
2. Private actions by individuals

# Remedies for Violations

1. Back wages
2. Penalties/fines/interest imposed by DOL
3. Criminal penalties against employers, including owners
4. Double or Triple damages
5. Reasonable attorneys' fees & costs

*\* Insurance does not typically provide coverage for these claims.*

# The New Salary Requirements

## **Apply to Exempt, Salaried Employees**

- Administrative Employees
- Executive Employees
- Professional Employees
- Highly Compensated Employees

*Under the new rule effective December 1, 2016, the “duties” tests will not change.*

# The New Salary Requirements

## WHY?

- Current salary was set in 2004
- Annualized equivalent of current salary is below the poverty line for a family of 4
- This “will result in a meaningful boost to many workers’ wallets, and will go a long way toward realizing President Obama’s commitment to ensuring every worker is compensated fairly for their hard work.”

# The New Salary Requirements

- \$913 per week or \$47,476 annually for a full-year worker
- \$134,004 per year for highly compensated employees
- 10% of the new salary level can come from nondiscretionary bonuses and commissions
- Automatic updates to salary and compensation levels every three years

# Plan Ahead Now

1. Identify salaried employees making less than the new threshold
2. Audit job descriptions & hours worked; consider tracking everyone's working hours now
3. Audit financial impact of alternate pay methods – paying OT vs. bumping salaries
4. Prepare a communication plan to address possible impact on employee morale

# Complying with the New Rule

1. No salary changes necessary after evaluation because no one is working OT
2. Reorganize workloads & schedules
3. Increase salary
4. Maintain current salaries but pay overtime for hours in excess of 40
5. Classify as “salaried non-exempt” or “hourly non-exempt”

# The Smartphone Issue

- Studies have shown that employees who use smartphones work longer hours.
- Consider implementing “core hours”
- Consider using software that tracks hours when employees are using company smart phones



# DOL's Time-Limited Non-Enforcement of New Rule

The DOL will not enforce the updated salary threshold of \$913/week between 12/1/16 and 3/17/19:

- For providers of Medicaid-funded services for individuals with intellectual or developmental disabilities
- In residential homes/facilities with 15 or fewer beds

# Pending Legislation

## H.R. 5813

- Gradual increase
- December 1, 2016 -- \$35,984
- December 1, 2019 -- \$47,476
- Would prohibit the final rule's automatic increases to the salary threshold every three years.

# Pending Lawsuits

Officials from 21 states and more than 50 business groups, including the U.S. Chamber of Commerce, filed two lawsuits on Tuesday, September 20, 2016 in Texas federal court challenging the new FLSA overtime rule.

# Need Help Figuring it Out?

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