Guest Commentary

Bracing For The Impact Of DOL's Overtime Rule

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An additional 4.2 million salaried workers — including thousands employed by banks and other financial services firms nationwide — may be eligible for overtime pay beginning Dec. 1 under a new rule finalized in May by the U.S. Department of Labor.

The new regulations increase the salary threshold for the commonly referred to "white collar exemptions" from overtime pay to $47,476 a year, more than double the current threshold of $23,660. The new regulations do not change the duties test for exempt status, but the new salary threshold will affect millions of employees currently classified as exempt from overtime pay.

Intended to boost wages for low- and middle-income earners, the announcement was met with criticism by small-business owners and other employers concerned about affording higher pay for exempt staff members.

"If this rule was supposed to help workers, it misses the mark," said Rob Nichols, president and CEO of the American Bankers Association. "It will be harmful to bank employees and the banks who employ them, and, as usual, smaller banks will be hit the hardest. As it stands, throngs of employees across the country, especially those at small banks and branches where a handful of employees wear many hats, will face reduced opportunity and flexibility in the workplace."

With less than six months to go until the rule takes effect, employers are scrambling to prepare for its implementation and ensure compliance with the updated regulations. Fortunately, employers have various options to comply with the new rule.

- The administratively simplest solution is to increase the base salary of affected exempt employees to the new minimum. The impact may not be as drastic as some fear. In many industries or communities, exempt employees are already earning salaries well in excess of the current $23,660 threshold. For example, an employer may provide an exempt employee already earning $45,000 per year with a 5 percent to 6 percent salary increase to meet the new threshold and continue overtime-exempt business as usual. Obviously, in some circumstances, meeting the new threshold may call for a much more significant salary increase that does not make financial sense.
- Alternatively, employers may elect to pay salaried staff (who earn less than the new threshold) time-and-a-half wages for each hour exceeding 40 per week. The "regular rate" for calculating overtime would be based on the employees' salary divided by 40 hours per week. The employee would then be paid time-and-a-half (of the regular rate) for each hour over 40 per week.
- A little known but potentially attractive option for some employers is the "fluctuating workweek" method of compensation for employees whose hours of work vary from week to week. Under the fluctuating workweek method, an employee who receives a fixed amount as straight time pay for whatever hours he or she is called upon to work in a given week (salary) may be entitled to compensation for overtime hours at only half-time (rather than time-and-a-half). There must be a "clear mutual understanding" between the employer and employee before using this method.
- Some employers may opt to simply limit affected employees to 40 hours a week, which would eliminate additional overtime costs but possibly disrupt operations.
- Employers also can explore the option of reclassifying employees from exempt salaried to nonexempt hourly status. Based on input from the business community and the banking industry in particular, there is some expectation that reclassified employees may view the change in status as a demotion and/or lament the loss of flexibility that comes with being a salaried employee. A wide salary range for bank branch managers and other employees — depending on experience, branch size and location — means the new threshold also could result in the need to classify workers with similar job titles differently, further muddying the waters and affecting employee morale.
- And, of course, although it subverts the intent of the new rule, some companies may opt to reduce the base salary of affected employees to offset the cost of overtime payments. Employers must carefully consider the potential impact on employee morale before implementing reductions to base salary.

As a beginning step, companies should start reviewing the compensation of exempt employees who are paid less than the $47,476 threshold and then determine the amount of overtime work those individuals are currently performing. After obtaining a better understanding of hours actually worked, companies can then use such calculations to determine the most attractive compensation models for particular circumstances.

Implications of the new rule are wide-ranging and likely to cause administrative headaches, as well as challenges in operations and employee relations. Nevertheless, the new rules need not be financially crippling. Options exist for various financial circumstances, but changes require a careful and thoughtful approach, both in implementation and communication to staff. Moreover, companies must remember that the salary threshold will be automatically updated every three years. To maintain continued compliance, companies need to regularly revisit exemption classifications with trained employment professionals and legal counsel. ■

Editor's Note: This article was submitted by Husch Blackwell, an MBA associate member. For more information, visit huschblackwell.com.