

Are You Ready For The New DOL Overtime Rules?

IDAHO STATE BAR, BUSINESS & CORPORATE LAW SECTION

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They're here!



What are the DOL final changes?

- ▶ Increase in salary basis test for white collar exemptions from \$23,660 (\$455 per week) to \$47,476 per year (\$913 per week).
- ▶ Increase in total annual compensation requirement to exempt highly compensated individuals from \$100,000 to \$134,004 annually.
- ▶ Annual salary threshold will be updated every three years.

Are you ready?

- ▶ Changes go into effect on December 1, 2016!



Whose effected and how?

- ▶ 4.2 million white-collar workers will become eligible for overtime under the new criteria.
- ▶ Will cost private employers \$1.8 billion.

Quiz time...

What are the white collar exemptions?

- ▶ A. Executive and Administrative.
- ▶ B. Outside Sales and Computer Professional.
- ▶ C. Executive, Administrative and Professional.

Answer

- ▶ C. Executive, Administrative and Professional.

The Bottom Line

- ▶ It's more difficult for employees to be exempt from overtime and employers may need to reclassify exempt employees to nonexempt.
- ▶ It will cost many employers time and money to get in compliance.

What Should Employers Be Doing?

- ▶ Audit clearly impacted positions.
- ▶ It's a good time to make sure all of your employees are properly classified.

What's an audit?

- ▶ For white collar exemptions, consider new salary basis test.
- ▶ Consider budgetary impacts: how much will your organization be impacted by having to raise pay to meet exemption or to pay OT?
- ▶ Don't forget employees have to meet duties test, too.
- ▶ Consider other issues we will discuss today.

Employer options

- ▶ Employers will need to:
 - 1) increase salaries so earnings are above threshold;
 - 2) reclassify employees from exempt to nonexempt; or
 - 3) restructure the workforce or particular jobs.

Non-discretionary bonus option

- ▶ New regulations allow employers to use nondiscretionary bonuses and incentive pay to satisfy up to 10 percent of salary threshold, providing incentives are made on a quarterly or more frequent basis.

Question

- ▶ True or False:
- ▶ This would be a good time for employers to audit all exempt positions, not just their white collar exemptions?

Answer

▶ TRUE!

Rare Opportunity for Employers

- ▶ Make sure all exempt employees satisfy duties test and salary basis test.
- ▶ Good time to make any required changes without throwing up red flag.

Quiz time...

- ▶ If an employee does not meet the new minimum salary threshold, do you have to convert that employee to an hourly employee?

Answer

No, but:

- ▶ Must pay overtime for all hours worked over 40 hours in the defined workweek.
- ▶ Must still keep records of hours worked.
- ▶ Must be aware of how that can impact regular rate of pay used to calculate overtime.

Reclassification Considerations

- ▶ Time-keeping requirements.



Time-Keeping

- ▶ Newly classified non-exempt employees will need training on time-keeping systems and will need to track start times, end times, break times, meal times.
- ▶ Do you have the technology and training you need?

Off the Clock Considerations

- ▶ Consider how you will address work on company phones and laptops:
 - 1) Take away devices;
 - 2) Authorize OT for work at home;
 - 3) Set parameters on work at home;
 - 4) Consider whether deadlines and productivity will suffer if work at home is prohibited.

Benefits

- ▶ Are there different levels of benefits for exempt and non-exempt employees, such as for PTO or vacation accrual?

More Overtime Issues

- ▶ Should employer hire additional workers to get work done?
- ▶ Are supervisors trained on how to track time, how to compute overtime and how to manage it?
- ▶ Is it an option to hire independent contractors and, if so, what are the pitfalls?

Messaging Will Be Key Because of Impacts.

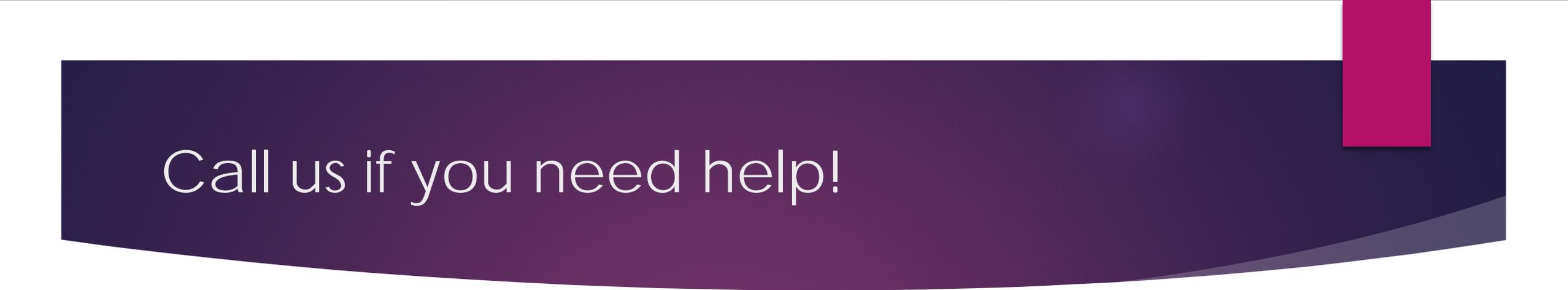
- ▶ May feel like a demotion to be reclassified to non-exempt.
- ▶ Employees may have less flexibility.
- ▶ Employees may worry they won't have the ability to get their jobs done.
- ▶ May result in fewer advancement opportunities.

Messaging considerations

- ▶ Don't wait until December 1st to discuss issue with impacted employees.
- ▶ Reduce element of surprise and explain why changes are happening.
- ▶ Highlight the positive: after hours work will now be paid and employees will be compensated for time away from family.

Other considerations

- ▶ How will changes impact recruitment? Will changes make it more difficult to recruit middle management positions?
- ▶ Ripple effect of salaries: if you increase mid-level salaries to keep employees exempt, will you have to raise salaries up the ladder?
- ▶ Are job descriptions and policies up to date?



Call us if you need help!

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