

Are You Prepared for Revisions to Federal Regulations on Overtime?

By **Kristin Nealey Meier**

Member

Ryan, Swanson & Cleveland, PLLC



Employee rights and working conditions have been an increasingly popular issue in local and national debates. While much of the focus has been on minimum wage, employers need to pay attention to President Obama's March 13, 2014 directive to the Department of Labor ("DOL") to update the regulations governing overtime rules. Although DOL has not yet issued the new regulations, it has announced it will continue enforcing current regulations, including increased scrutiny on employers' classification of their employees as exempt from overtime regulations.

The Fair Labor Standards Act, or FLSA, establishes the federal minimum wage and requires that employers pay overtime—1.5 times the hourly wage for any work beyond 40 hours per week—with an exemption for managerial and administrative staff. In order to meet the threshold to be overtime-exempt, employees must make more than a certain amount per week—the salary threshold (currently \$455 per week) — and then must satisfy a duties test. The test looks at whether the employee performs certain required managerial, administrative, or professional tasks, such as supervising other workers and exercising independent judgment. Contrary to popular belief, overtime rules apply just as much to salaried workers as they do to hourly workers. If an employee's fixed salary falls below the salary threshold, or the employee does not meet the duties test for overtime exemption, then the employer must pay the salaried worker 1.5 times the hourly wage for work that exceeds 40 hours per week.

The salary threshold is currently \$455 a week, which translates to an annual salary of \$23,660. According to the Center for

American Progress, only 8 percent of full-time salaried workers have guaranteed overtime rights. Part of President Obama's directive is expected to result in a significant increase of the salary threshold to ensure that more workers are guaranteed overtime regardless of their duties. Employers must pay attention to the new regulations to ensure that those employees who do not meet the new salary threshold receive overtime for each hour worked over 40 hours in a week.

Because the salary threshold is currently low, employers determine overtime-exempt status on the duties test. When DOL investigates and enforces overtime-exempt rules, it will look at the tasks an employee actually performs, not the title or job description on paper. Employers should be wary, as the U.S. Secretary of Labor said in June 2009, "make no mistake the DOL is back in the enforcement business." She has been true to her word.

Much of the problem is that the rules are so complicated that even well-intentioned employers may be out of compliance and at risk for substantial fines, penalties and requirements to pay the employee

all overtime back pay. State laws vary on their classifications for overtime-exempt status, and an employer must analyze the employee under state law as well as federal. In order to save the time, expense and headache of a DOL investigation, and to get a jump on preparing for the new regulations, employers should audit their employees' overtime-exempt status and consult with an attorney if they have any question about whether an employee meets the duties test for the particular exemption.

Kristin Nealey Meier is a member of Ryan Swanson's Healthcare Practice Group. Reach her at 206.654.2293 or kmeier@ryanlaw.com.

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