NEW EXEMPT EMPLOYEE RULE:
SUBSTANTIAL CHANGES ON THE HORIZON

Business owners continue to face labor challenges due to changing cultures, available labor pool and changes in minimum wage rulings in many states. One of the most impactful changes is the new Department of Labor (DOL) exemption rule which will require higher minimum salaries for exempt employees.

The DOL projects this new ruling will cost employers an estimated $12 billion over the next 10 years. Sticker shock has left many business owners and executives feeling paralyzed. However, like all other business regulation, education and preparation are vital in ensuring the least possible impact on your business.

Now is the time to address the DOL exemption rule changes. The passed regulations offer little time for implementation and will affect your business. Planning versus reacting will be your biggest asset in managing the change. Unlike many projects, investing in the proper review and foundational development of your labor roadmap will positively impact your business far into the future.

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WHAT IS THE NEW RULE?

There are three main provisions outlined in the new DOL ruling:

1 MINIMUM SALARY FOR EXEMPT EMPLOYEES

a. *Standard employees* – the minimum salary for standard employees to maintain their exempt status will increase from $23,660 ($455 per week) to $47,476 ($913 per week).

b. *Highly compensated employees* – the minimum salary for highly compensated employees to maintain their exempt status will increase from $100,000 to $134,004.

2 BONUSES & INCENTIVE PAYMENTS

(including commissions)

The current rules do not allow for the inclusion of bonus or incentive payments in determining whether employees meet the minimum salary threshold.

The new ruling will allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new minimum salary threshold, as long as the payments are made at least quarterly.

3 FUTURE INCREASES

The current rules have no provision for future escalation of the minimum salary threshold.

The new ruling includes provisions whereby the minimum salary threshold will be updated every three years.

More information on the Fair Labor & Standards Act (FLSA) is available at www.dol.gov/whd/flsa.

WHEN DOES THE NEW RULE TAKE EFFECT?

DECEMBER 1 2016

The new rule becomes effective December 1, 2016.

HOW DOES THE NEW RULE IMPACT YOUR BUSINESS?

One thing is certain—the new rule will have some impact on almost all businesses. The scale of that impact, however, will vary widely from organization to organization.

To determine the extent of the impact, business owners and executives should be investing the time and energy NOW to align their company's labor roadmap with the new ruling.

Businesses who don't comply by the December 1 effective date subject themselves to DOL investigations, which almost always result in back wages to be paid, punitive fines and reputational damage to the employer.

WHAT SHOULD YOU DO NEXT?

The review of your current labor roadmap and development of a go-forward plan can seem daunting. To aid our client's efforts to plan and mitigate this uncertainty, HORNE has broken down the process into the following manageable steps:

STEP 1 IDENTIFY YOUR IMPACT

The obvious issue here is employees currently classified as exempt who will not qualify under the new ruling. Identifying these employees will give a partial picture as to the impact the new ruling will have on your business.

A less considered issue is that many businesses currently have employees classified as exempt that do not qualify for exemption under current DOL standards. These employees may qualify under the minimum salary requirements, but do not perform the required duties/tasks outlined by current DOL regulations. These duties/tasks have not changed under the new rule—therefore, improperly classified employees prior to the new rule will still not qualify as exempt.

The new ruling will only increase the frequency of DOL/FLSA audits and reviews. Now is the time to perform a comprehensive review of all employee classifications to ensure future compliance and avoid significant costs.

STEP 2 WEIGH THE SOLUTIONS

Simply increasing exempt employee wages to meet the minimum salary requirements of the new rule is not the right answer for any business. There are many different options that must be considered for each individual employee situation.

For example, instead of increasing salaries, employers may want to institute performance bonus programs, which could allow businesses to meet the requirements of the new rule while providing additional incentive to employees to meet performance/efficiency targets.

Converting salaried employees to hourly is another consideration. When exploring this option, employers must be cognizant of overtime premiums due on bonuses and other incentive payments. The inclusion of these payments can add significant complexity to wage-per-hour calculations.

Employers will also need to analyze exempt employee work patterns to determine if those employees would be due significant overtime; employees without significant overtime hours may be best suited for non-exempt classification.

Other considerations include job sharing, additional staffing, overtime options and hourly employment. The options for obtaining DOL compliance are numerous. Determining the most cost-effective, long-term solution will involve comprehensive analysis by someone with intimate knowledge of the new rule and the options available.

STEP 3 IMPLEMENT & COMMUNICATE

Implementation of identified pay scale/classification changes could prove to be the easiest step in this process. However, this creates a significant responsibility to communicate changes made with employees and implement processes to ensure future compliance.

How you treat your employees resonates far beyond your walls. It affects your ability to attract and hire the best talent, impacts your staff's satisfaction and, ultimately, impacts the quality of their work.

Take time to consider your existing staff's opinions as you align compensation/classification changes with the new exemption rule and when you are ready to communicate changes—do so openly and honestly. This should include views on your current staffing culture, anticipated regulations and future staffing needs. Your staff will appreciate transparency and inclusion in the process.

Considering necessary process changes will be another essential step in implementing any decision you make. For example, hourly employees generally don't have flexible work arrangements, and they don't often receive or send emails after hours.

If you change salaried employees who are used to working after hours to hourly status, how will you handle work performed off-site or after hours? Will you restrict such work, record the time spent or allow employees to adjust their schedules?

Additionally, if you choose to expand the pool of non-exempt workers eligible for overtime, you must ensure those newly eligible for overtime are able and have the training to record time worked accurately every day. These are all considerations to be included in your Step 2 analysis.

HOW CAN HORNE HELP?

HORNE has long been consulting with clients on managing the DOL landscape. We have extensive knowledge of the new DOL rule and have identified many best practices that provide our clients cost-effective, long-term solutions. Reach out to your HORNE advisor for any assistance you may need in evaluating your compensation options and devising your road map for this significant change.