NEW EXEMPT EMPLOYEE RULES: 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 rules which will require higher minimum salaries for exempt (salaried) employees.

The Final Rule would increase the minimum wage for exempt status employees to change to $47,476, and allows employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new threshold. This is almost twice the current annual level of $23,660 ($455 per week). The Final Rule goes into effect on December 1, 2016.

In a typical Quick Service Restaurant (QSR), the manager and sometimes assistant manager(s) are generally paid a salary and work beyond 40 hours per week. Their salary levels are normally far below the proposed $970 per week to qualify for exempt status. The benefits of salaried employees typically include greater job security, work flexibility and the ability to telecommute. These benefits would be at risk under the proposed changes. So how does a restaurant owner adjust to the pending DOL change?

THE BOTTOM LINE

$47,476

New annual salary threshold below which workers will qualify for overtime pay

5 WAYS TO PREPARE FOR THE NEW RULES:

1. **LOOK FOR BEST PRACTICES.** The most important advice to is to be proactive and look for opportunities to discuss the subject with other restaurant owners. Share best practices with owners of similar businesses. You will be able to make better decisions as an informed operator by doing as much research as you can on the subject.

2. **TAKE AN ANTICIPATORY VIEW.** Consider the current mindset of your labor pool as you align compensation changes with the new exemption rules. This should include views on current staffing culture, anticipated regulations and future staffing needs.

   This is an opportunity to look forward and make adjustments to your advantage. Staying current with today's staffing culture is important in attracting a quality workforce. The ability to think outside traditional solutions to labor challenges will be an important asset as you evaluate your options.

3. **REVIEW YOUR BONUS PLANS.** This is a great time to visit the effectiveness and necessity for performance-based bonus plans. If you maintain exempt manager positions, you may need to combine your current bonus plan with your salary levels to reach the new minimum levels for exempt status. This will require an honest evaluation of the real effectiveness and profitability of your bonus plans.

   How often you change bonus plans and the percentage of management staff that actually achieves their plans are indicators of effectiveness. Nonetheless, if managers are considered hourly employees, these performance plans fall under the category of profit-sharing bonuses and are subject to overtime rules and base pay calculations.

   If you decide to move your exempt employees to hourly pay and provide profit-sharing bonuses as any part of their total compensation, you will need to consider the additional cost of those bonus calculations to that hourly pay. More information on the Federal Labor & Standards Act is available at www.dol.gov/whd/flsa.

4. **DO THE MATH.** This is probably the easiest part of evaluating management compensation plan changes in your business. You can quickly calculate the effect of moving exempt employees to hourly pay and the impact on your labor cost. However, you also must consider items like overtime management hours and rates; staff needed to cover the change; the cost of hiring additional staff; running a business without the benefit of exempt employees, if needed; and other considerations related to the change in exempt labor status.

   Lay the changes out on paper, add your current staff and pay rates, and consider additional staff needed to determine if it works for your business. Confirm on paper that your labor roadmap makes sense inside your four walls. You may find that having management compensation options for the same position work as a solution to your labor cost and culture needs.

5. **DON'T FORGET THE OTHER CHANGES.** In many cases, the DOL rule changes will impact on your overall labor costs. You will need to be careful and consider all pay rates to make sure they flow appropriately through the positions in your business.

   Additionally, there are other impacts on your business, both recent and future, that you must consider such as the Affordable Care Act and anticipated changes in minimum wage requirements. Both are hard trends that you can count on at some stage in your business life and should be considered in your calculations.

You should also take time to clearly consider your existing staff's opinions before making any changes. They will appreciate transparency and inclusion in the process.

Now is the time to address the DOL exemption rules changes. The proposed labor regulations are eminent and will affect your business. Planning versus reacting may very well be your biggest asset in managing the change.

Reach out to your HORNE advisor for any assistance you may need in evaluating your compensation options and devising your road map for this change.

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HORNE's Franchise team offers consulting services to business owners seeking advice on how to best manage the proposed regulations. To learn more contact us at HORNE.Franchise@hornellp.com or 866.297.9007.

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