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GBS Webinar - May

Here We Go Again

Fair Labor Standards Act (FLSA) Changes - 2024

PRESENTED BY

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boost

Today
May 28, 2024

- FLSA - Employment Law Update

Today

Proposed DOL Final Rules

- Published Date
- Ongoing Changes

Timelines

- Changes possibly starting on July 1, 2024

Building a Road Map

- Steps to take
- Identifying Impact
- Showing Patience

Implementation

A
short
story.

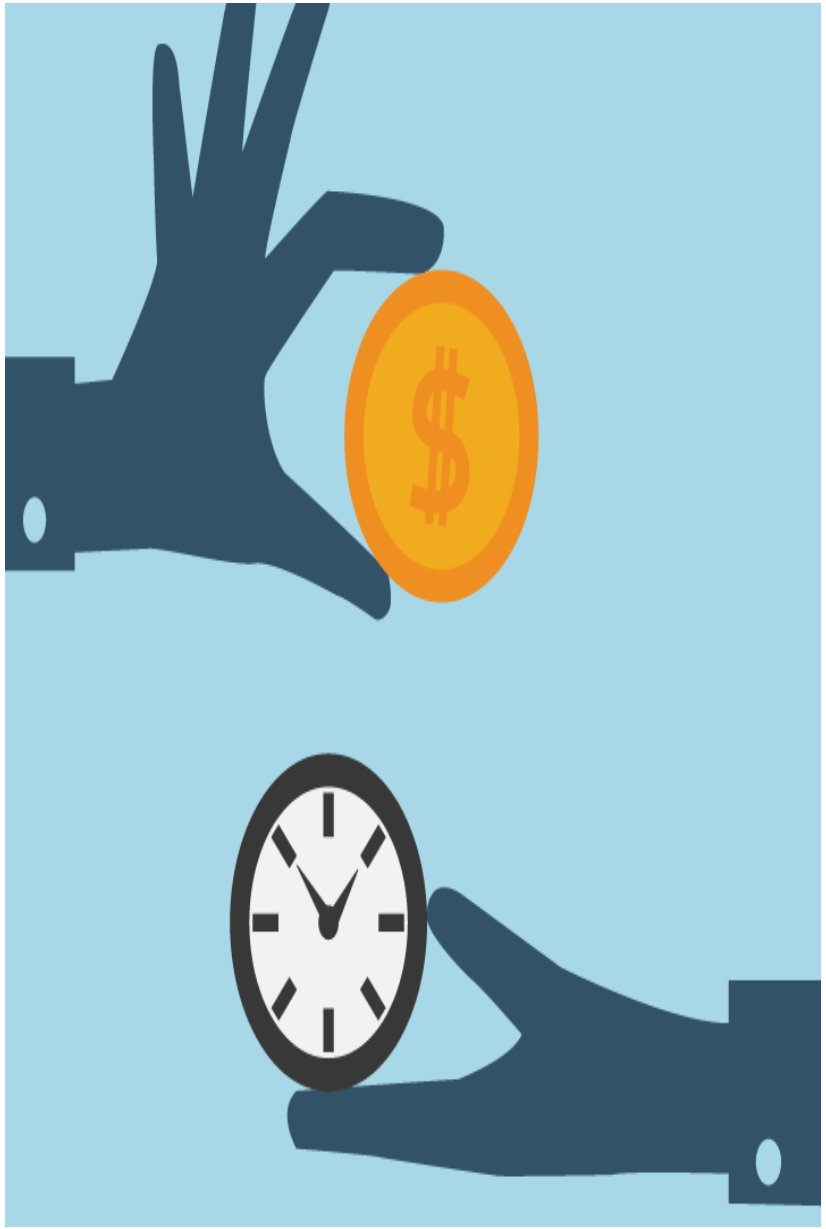
Public sector solutions and
unintended consequences.

It is estimated that nearly **4.25 million American workers** may be impacted by the future changes.

Many workers may end up moving from (exempt) **salary to hourly**.

This could be viewed as **positive** or **negative**.

FLSA Basics



FLSA

The Fair Labor Standards Act of 1938

Overtime Rules

Employers are allowed to **define the Workweek**

The Act allow **exemptions** from overtime

Salary Requirements / Compensation Rule / Duties Test

FLSA

The Fair Labor Standards Act

Addresses Final Pay Rules

Final pay not to go below federal minimum wage for active hours worked.

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FLSA

Wage claims are an '**enforcement priority**' for the DOL **Increased litigation** over wages
Remote worker concerns - clear policies
Tracking the start and stopping of work

The Fair Labor Standards Act

New claims under the FLSA

- Remote workers (accepting calls / working)
- Work prep time - donning, doffing
- Unrecorded time - computer booting up
- Class action / Collective action cases

The DOL is on the Move Again.

A quick history lesson.

May 17, 2016

› DOL Publishes ‘Final’ Rule

- Communicated an increase of the salary threshold to **$47,476**.
- A 7-month window is provided to allow employers the ability to prepare for the increase, up from **$23,660**.

September 20, 2016

› 21 States file a lawsuit against the DOL.

- Seeking to halt or delay the injunction.
- The cases are combined and presented in a hearing to Judge Mazzant in Texas District Court.

November 22, 2016

› Nine Days Before the Scheduled Implementation

- Federal Court judge in Texas issues a nationwide preliminary injunction block the US DOL.
- A 7-month window is provided to allow employers the ability to prepare for the increase from $23,660.

August 31, 2017

- Texas Judge Invalidates Proposed Changes.
  - It was the same judge, Amos Mazzant.

September 24, 2019

Another Final Rule is Issued by the DOL.

- Implementation window granted with an effective date of **January 1, 2020**.
- The minimum is raised from **$23,600** to **$35,568**, far below the projected **$47,476**.

Fast Forward to 2024.

April 23, 2024

- **Final Rule Published by the D.O.L.**
  - Changes again to the minimum threshold.
  - Changes to the Highly Compensated Employee (HCE) amount.

FLSA Salary Thresholds

Current Threshold

- $684 / week or $35,568.

Current Highly Compensated Employees (HCE's)

- HCE exemption is at - **$107,432**.
- At the HCE level, the employee does not need to go through the category or duties testing.

FLSA Salary Thresholds –

Changes now and ahead.

July 1, 2024

- Salary threshold set to increase to **$844/week** or **$43,888** annual rate.
- HCE exemption set to move up - **$132,964**.

January 1, 2025

- Salary threshold is set to increase to **$1,128/week** or **$58,656** annually.
- HCE exemption increase to **$151,164**.

January 1, 2027, and every three years:

- The threshold is set to realign with the **35th percentile** of weekly earnings of FT salaried workers based on the lowest-wage census data and **85th percentile** for the HCE.

Bonus Calculations

- **The New Rules continue to allow for the addition of non-discretionary bonuses and payments.**
  - 1. These bonuses include commissions or bonuses to employees who meet set criteria. Annual or shorter intervals.
  - 2. The bonus or commission may be used to satisfy 10% of the overall salary threshold.

Cash equivalents only. Stock options or non-cash compensation cannot be used in the calculation.

Bonus Calculation Example

- Annual base salary = $39,000
- 15% bonus = $5,850
- Applied bonus = $3,900
- **Total Compensation** = $44,850, however only $42,900 is measured under the calculation.

  - 10% is the maximum dollar amount **that may be applied. The employee would fall below the projected July 1st threshold of $43,888.**

Steps to Compliance.

1. Data
2. Identify
3. Educate
4. Meet
5. Make Changes July 1st

Data

Steps to Compliance

1. Pull the data from your HR data/software.
2. Find all exempt employees earning $35,568 - $43,888.
3. Also pull those who earn $45,888 - $58,656, for the January 1, 2025 group.

Identify

Steps to Compliance

1. Identify the total number of employees.

2. How many are within $1,000 of $43,888? These may be considered for a salary increase.

3. Determine location and remember to consider the state laws.

Educate

Steps to Compliance

1. Plan to educate those targeted for the July 1st deadline.

2. Will you increase the salary or move to hourly? Make the decision to increase those near the limit of $43,888. It may be only a six-month solution.

3. Inform the employees that the decision is being driven by federal law - this is not meant to penalize the employee.

Meet

Steps to Compliance

1. Meetings can take place in person or via video calls. I prefer in-person or even phone communications.

2. Consider the trend/risk of employees recording manager communication calls over video.

3. You could choose to wait until June 30, 2024 to meet with any employees.

Implement

Steps to Compliance

1. Implement the changes in your payroll system.

2. Consider your payroll period. July 1st is a Monday. You may be able to delay any system actions until payroll hits in mid-July.

3. Patience may pay off.

4. When any changes are implemented, memorialize the changes as part of the employee file, with a pay change form (required in some states).

What if you have a salaried employee making, **$43,500** annually?

People Considerations

- **Transparency** in Communications
- Address a possible **sense of demotion**.
- Discuss **year over year pay** and the intention to see compensation grow.
- **Discussion of overtime**.
- Address any new **timekeeping practices**.
- This is **not** a result of **poor performance.**

Balancing Pay Example

- Annual salary of $40,000, working 50 hours per week, no bonus.
- 2600 hours per year = $15.38 / hour
- A straight across move to $15.38 per hour would result in straight time of $31,990.40. The additional 10 hours of OT per week would result in 520 hours at $23.07 per hour or $43,986.80.
- **This becomes a production challenge or a payroll/cost challenge. Will you reduce the wage? Wage compression issues may also arise.**

The 40-hour Per Week Employee

The Office Manager

- This Office Manager **NEVER** exceeds 40 hours per week.
- Pay is $46,000 annually with no bonus.
- The employee will be above the **July 1st** threshold, but far below the **January 1st 2025** threshold.
- **Is there risk?**
- **Is there risk in January of 2025?**

A shorter window to compliance in 2024, compared to 2016.

Will individual states respond?
Will Texas take another shot?

Other FLSA Standards Remain

Enterprise Coverage

- The organization must exceed $500,000 income annually.

Non-Profits.

- Only activity in competition with '**for profit**' business count in the $500,000 calculation. Ex: Kidney Foundation - selling vehicles.

Hospitals and Government Agencies Must Meet FLSA Rules

Outside Sales

The Outside Sales Exemption under the FLSA

To qualify for the outside sales exemption, both of the following must be met:

- 1. The employee's primary duty must be making sales, obtaining orders or contracts paid by the client or customer.
- 2. The employee must be customarily and regularly engaged away from the employer's place of business.

Who is Not Included?

- **Doctors**
- **Lawyers**
- **Teachers**
  - For teachers who have a primary duty to teach, tutor, instruct or lecture students as part of an educational establishment - the FLSA **does not apply**.
- **Others**
  - **Farmworkers**, **parts employees** and **mechanics** employed by automobile dealerships, **commissioned sales employees** in **auto**, **truck, trailer** and **farm implements**, **announcers**, **news editors**, **broadcasting employees**, **domestic workers** living in the employer's residence, **employees of motion picture theaters**, and **Interstate commerce employees** who fall under the **Motor Carrier Act** may be exempt from the overtime provisions of the FLSA

States are Driving the Minimum Wage.

The Top Seven

Arizona **$14.35**
California **$16.00**
Connecticut **$15,69**
New Jersey **$15.13**
New York **$16.00**
Maryland **$15.00**
Massachusetts **$15.00**

20 States maintain the **federal Minimum Wage** of **$7.25** / hour.

State Considerations

The following five **states** have **already increased** their FLSA minimums.

California

- $66,560
  - Increased on 1/1/2024

Colorado

- $55,000
  - Increased on 1/1/2024

Maine

- $41,401
  - Increased on 1/1/2024

New York

- NYC, Nassau, Suffolk, Westchester
- $62,400
- All other NY Workers
- $58,458

Washington

› $67,724.80

Choices

- **Increase the salary** to the new threshold.
- **Move the employee to hourly** and pay the overtime.
- **Move the employee to a lower hourly wage** and allow the overtime. (Note: this is not viewed as retaliatory by the DOL).
- Consider the use of **part-time employees** to fill the production gap.

What You Learned Today

- **Changes** could be coming as soon as five weeks from Memorial Day (yesterday).
- The **other standards** of the FLSA **remain in place**.
- The **HCE threshold** is also set to increase.
- We should **be prepared to implement possible changes**.
- Because of the short timeline, **the July 1st threshold may stand, uncontested**.

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Thank you for joining me today!

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