

STU Update – A Primer on the Revised Overtime Pay Regulations

As you may know, the United States Department of Labor (USDOL) is finalizing revisions to the regulations that govern overtime pay. On March 13, 2014, President Obama signed a Presidential Memorandum in which he charged the USDOL to update the rules and regulations that govern overtime especially as they relate to identifying white-collar workers who should be entitled to overtime pay. Below we provide a quick overview of the overtime pay rules, the revisions made to those rules by the USDOL and why the USDOL deemed those revisions necessary.

How Did We Get Here?

The Fair Labor Standards Act (FLSA) was passed into law, among other things, to provide U.S. workers with a guaranteed minimum wage and to place a limit on the number of hours an employee could work without receiving additional compensation. The additional compensation is provided in the form of overtime pay. Under the FLSA guidelines employees are generally classified as “non-exempt” or “exempt.”

Non-exempt employees must be paid the minimum wage and typically are paid on an hourly basis. These employees must receive overtime pay for any time they work that exceeds 40 hours in a single week.

Exempt employees are certain white-collar employees whose job duties are considered “professional,” “executive” or “administrative.”

- An administrative employee’s primary duties must involve the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers. He/she must exercise discretion and independent judgment with respect to matters of significance.
- An executive employee’s primary duties must include the management of a department, subdivision or an entire enterprise. He/she also must regularly direct the work of at least two employees and either (i) have the authority to hire or fire employees; or (ii) have his/her recommendations regarding hiring and firing given serious consideration.
- A professional employee must perform work that requires the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor. Also, his/her primary duties must (1) require advanced knowledge in a field of science or learning customarily acquired by prolonged, specialized, intellectual instruction and study, (2) be work that is original and creative in a recognized field of artistic endeavor, (3) involve teaching in a school system or educational institution, or (4) be as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.

Administrative, executive and professional employees are exempted from the minimum wage and overtime pay requirements, in part, because it is assumed that they earn higher salaries, receive better benefits, have more job security and have better advancement opportunities than non-exempt employees.

Under the current overtime pay rules, in order to be considered “exempt” an executive, administrative, or professional employee must be paid at least \$455 per week (\$23,660 per year for a full-year worker). An employee who is paid less than \$23,660 is automatically assumed to be non-exempt and must be entitled to receive overtime pay.

What Changes Was Made to the Rules?

The USDOL has proposed to increase the salary threshold for exempt employees from \$23,660 to \$50,440. This will mean that any employee who currently earns less than \$50,440 automatically will be re-classified as a “non-exempt” employee and, as such, will now be entitled to overtime pay.

Why Was The Change Made?

The \$23,660 salary threshold originally was meant to exclude administrative, executive and professional employees from overtime pay rule. However, the salary threshold has not been updated in a long time which has meant that millions of workers such as convenience store managers, fast food assistant managers and lower-level office workers who are expected to work at least 50 or 60 hours a week have not been able to receive overtime pay simply because they earn as little as \$23,660 a year. The increase from \$23,660 to \$50,440 is intended to extend overtime pay to more U.S. workers whose positions do not fit the administrative, executive or professional duties exemption.

When Do the Revised Rules Become Effective?

It is expected that the finalized overtime pay rules will be issued sometime late spring or early summer 2016. However, the finalized rules are expected to be effective retroactively to January 1, 2016. This would mean that employers would need to issue back wages to employees whose wages were less than the new threshold of \$50,440 and who were not pay overtime for any hours they worked in any given work week that exceeded 40.

Next Steps

If you haven’t done so already, we highly recommend that you meet with your employment lawyers and human resources consultants to review your personnel records and analyze the potential impact of the revised overtime rules on their payroll expenses. If you have any questions about how the revised rules on overtime pay will impact your company, please contact Nwa’ndo Ume-Nwagbo by phone at 404-418-8492, ext. 103 or by e-mail at: neu@stulawgroup.com.

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