FLSA Changes to Over-Time Regulations: This is happening

What you need to know:

- This change will impact every business in one way or another
- Type of industry and size of a business does not matter or play a factor in these changes
- The current estimated impact that directly effects employees is around 11 million
- Definitions to understand the terminology in the FLSA
    - Exempt = Salaried (Example: Position makes $35,000/yr)
        - Not Eligible for Over-Time
    - Non-Exempt = Hourly (Example: Position makes $16.82/hr)
        - Eligible for Over-Time

What is the FLSA:

- FLSA is the Fair Labor Standards Act and it states how we pay employees
    - Including but not limited to Travel Pay, Commissions, Overtime…etc…
- For our purposes, it states who is and who isn't exempt from over-time
- The FLSA is governed by the Department of Labor and is the main focus of any DOL Audit

What are the current regulations (specific to this white paper and over-time):

- Currently there are 5 areas for exemptions and there is a test that must be met in order to qualify for the exemption (exemption meaning Exempt from over time):
    - Administrative
    - Professional
    - Executive
    - Computer Professional
    - Outside Sales
- **Exemptions are determined by Job Duties, NOT Job Titles**
- Currently, if a position passes the test to be qualified as Exempt, then the employer has the option to pay the employee on a Salary basis or Hourly basis.
    - If a position is exempt, the FLSA tells us we have to pay that position a minimum of $23,660/year or $455/week.
    - Example:
        - An Office Manager that qualifies for the Administrative exemption from over-time can be paid $35,000/year (must be paid over $23,660)
        - That means if they work over 40hrs/week their pay check doesn't change (they could work 45hrs, 60hrs, 100hrs in a 7day* pay cycle, doesn't matter)
        - That also means if they work under 40hrs in a week their pay check doesn't change (They could work 38hrs, 30hrs, 15hrs in a 7day* period, doesn't matter)

- Alternate Example:
    - An Office Manager (note: same job title) that doesn't pass the Administrative exemption test and is paid $35K/year
        - The position is Non-Exempt, meaning qualifies for Over-time and must be tracked on an equivalent hourly rate of $16.82/hr based on a 40hr week.
    - That means if they work over 40hrs in a given 7day* pay cycle they are required to be paid Over-time (time and a half) for every hour over 40hrs.
        - Equivalent of $25.24/hr
    - Additionally, that means they are paid for "actual" hours worked under 40hrs, meaning if they work 38hrs, they are paid for 38hrs at $16.82/hr and their check would not equate to a consistent 40hr/week pay check.

What are the new regulations under the FLSA:

- The Department of Labor has decided to Raise the Salary level
    - As noted above the current salary level for Exempt employees is $23,660/yr
    - The new salary level will be set at the 40th percentile of employee earnings across the US, and that number will be **$50,440/yr** (yes, you read that correctly)
    - Additionally, that salary number will now change year to year based on the 40th percentile and how it adjusts from year to year

What does this mean and what should you (the employer) do:

- Using the example above:
    - You have an Office Manager that meets the requirements for an Administrative Exemption and they make $35,000/year
        - Today, you are in compliance
    - With the new changes, you have to make a decision as an employer before the changes go into effect, at that time you would be out of compliance for any future audit that included any period where you hadn't made this adjustment.
    - You have two options:
        - 1. You decide to leave your employee as exempt and raise them to the minimum salaried amount of $50,440/year
        - 2. You decide a $10K/year raise is not worth the financial hit or doesn't align with your company structure and you move the employee to hourly at the equivalent $35K rate which is $16.82/hr and they are now eligible for Over-Time.
            - Their time must be tracked and documented with payroll records
- You may ask the question, can an employee who passes the test for Exempt status be paid on an hourly rate since they don't make the $50,440 salary threshold?
    - Yes, they can. The Department of Labor is not interested in employers giving every Exempt employee a raise to over $50K. They are interested in making sure an employee

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is not DENINED Over-time benefits if they don't meet the minimum requirements and that includes the minimum salary.

- It's important to understand that we're still playing by the same rules that are in place today, it's just the numbers that have changed and the decisions that fall under those rules that were a no-brainer at $23,660 and most likely ignored, are now coming to the forefront and need to be taken into consideration.

Lastly, when do these changes take effect:

- Short answer: 2016
- Better answer:
  - All changes are currently with the Office of Management and Budget (OMB)
  - This office will be the office to publish the final rules to the Federal Register. At that time, there will be a 60day publishing period and then they will be in effect and enforceable by the Department of Labor on the 61st day.
  - The publishing date is expected to be May 1st, making the effective date July 1st, 2016.
    - Yes, that date is a moving target and one that is being followed closely
    - This hasn't been an overnight change, this has been going through a review committee since late 2014.
    - The waiting period we're in now is just that, everything is being published to outlets, hence this white paper, so businesses can become prepared

I hope this has been helpful, and if you have any questions please feel free to reach out to my contact info below.

Thank you,

Matt Tipton

*The 7day pay cycle that is referenced in this white paper is based on the Oklahoma state regulations for determining over-time. Please refer to individual state regulations when determining over-time.

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