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EY Payroll NewsFlash™

Change in overtime exemption rules to apply effective December 1, 2016

On May 18, 2016, the US Department of Labor issued the long-awaited revised rules governing the exemption from overtime pay that applies to qualified exempt employees. The new requirements take effect December 1, 2016, and are expected to extend overtime pay to 4.2 million employees currently exempt and boost wages by $12 billion over the next 10 years. (Email from President Obama, May 17, 2016.)

Last year, at the behest of President Obama, the US Department of Labor issued proposed regulations to increase the minimum salary for exempt workers from $455 per week ($23,600 per year) to $970 per week ($50,440 per year). It also proposed to raise the bright-line test from $100,000 to $122,148. (See *EY Payroll NewsFlash, Vol. 16, #171, 7-1-2016*.)

Under the final rule that applies on December 1, the salary threshold for salaried-exempt employees will be $913 per week ($47,476 per year), double the current amount but slightly less than proposed last year. This salary test will be adjusted for inflation every three years, and is expected to rise to $981 per week ($51,000 per year) when it is first updated on January 1, 2020.

Under the final regulations, and for the first time, in meeting the salary test, up to 10% of bonuses,commissions and incentive payments may be taken into account.

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Employment tax considerations

Employers should consider the extent these overtime regulations will increase their employment tax expenses.

The unemployment insurance wage base and/or tax rate schedules are tied directly to the average annual wage in some states (e.g., Washington), and in these states, higher overall wages could mean a bump in employers' unemployment insurance taxes. (See *EY Payroll NewsFlash, Vol.16, #164, 6-25-2015*)

If additional employees are hired to avoid overtime costs, employers should consider the employment tax impact of restarting the wage base for added employees (e.g.; Social Security and unemployment/disability insurance).

Other increases in benefits costs, and the related employment tax expense, should also be considered, such as, employer matching contributions to qualified retirement plans; higher disability benefits and insurance costs; increases in any other benefits tied to earnings, such as premiums for group-term life insurance.

For further questions concerning the employment tax impact of these regulations, contact Kenneth Hausser at Kenneth.hausser@ey.com.

The bright-line test for highly-compensated employees

The bright-line test for meeting the definition of highly-compensated employee also increases on December 1 to $134,004, significantly higher than the current $100,000 and more than the $122,148 proposed last year.

Salary-exempt employees' duties test

As a result of commentary on the proposed regulations, these final regulations do not change the current duties test.

Additional guidance is forthcoming

In the near future, the US Department of Labor intends to release three technical guidance documents, designed to help private employers, non-profit employers, and institutions of higher education come into compliance with the new regulations.

Ernst & Young LLP insights

The White House states in its *Fact Sheet* that employers have several ways they can comply with the new regulations for those salaried employees who are not highly-compensated (earning less than $134,044 per year):

1. Increase the pay of exempt employees to at least $913 per week ($47,476 per year), taking into account up to 10% of bonuses, commissions, and other incentive pay.
2. Pay overtime to those employees currently salaried-exempt who will earn less than the minimum salary above.
3. If the salaries will not increase to the required minimum for employees currently exempt from overtime, reduce their overtime hours (this may require hiring additional employees or adjusting the work schedules of other employees).

Businesses should discuss the wage-hour implications of the new overtime regulations with their legal advisors.
