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New Overtime Rules: All That Glitters Is Not Gold

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With apologies to Shakespeare (the above phrase is a slight corruption of his original line from *Merchant of Venice*, "All that glisters is not gold"), we continue our coverage of the Department of Labor's (DOL) controversial – to say the least – new overtime regulations. To catch everyone up, earlier this week the DOL issued its final regulations that more than doubled the minimum salary necessary to be considered for the key exemptions from overtime compensation under the Fair Labor Standards Act (FLSA).

As of Dec. 1, the new salary threshold will stand at $47,476 per year or $913 per week. This salary cutoff will *automatically* be raised every three years. While it is expected that the retail and hospitality industries will feel the greatest impact, virtually all employers will be affected by the new rules. Employees who expect to be newly non-exempt and therefore qualified for an overtime premium for hours worked over 40 in a week may be celebrating their apparent windfall (in fact, I have spoken to a few who are), and the Department of Labor's analysis of the regulations predicts significant increased wages. Employers and employees are beginning to work through some of the practical consequences of this change. In some of them, it seems that the law of unintended consequences may rear its ugly head.

Some of the questions and issues that will be faced by employers and employees alike include:

- Employers will have to consider whether previously salaried workers making below the increased threshold will be reclassified as non-exempt hourly employees eligible for overtime, or whether to give those employees a pay raise that keeps them above the new salary threshold. If an employer goes with the former option, what effect will telling a formerly salaried employee that he is now hourly have on his morale or motivation? Some employees may see this as a demotion.
- Alternatively, employers could just decrease an employee's number of hours or lower base pay to account for the new overtime premiums to be paid going forward. Indeed, these will be key tools for employers in managing the economics of the change. Employees anticipating a large raise may be disappointed.
- Will more employers start strictly limiting their employees to 40 hours a week and institute policies disciplining those employees that work over 40 hours?
- The need for employers and employees to track hours will increase significantly. Tracking hours can be a major headache, especially when employees work from home or send the occasional after-hours email that the DOL would consider work. Will this decrease opportunities for telecommuting or evening/weekend work (which many employees enjoy or need to complete assignments)? Will employers limit the ability of employees to use their laptops or smartphones when away from work? For newly non-exempt employees, that may be advisable.

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- What effect will a more tightly-structured work schedule (due to tracking requirements) have on an employee’s flexibility to pick up his or her kids at school, cut out early to catch a child’s baseball game or take half a day off to extend that three-day weekend?

- If employers give raises to employees to bump them over the salary exemption minimum, will those employees who previously were just over the limit also expect and be given raises on par with their colleagues?

These are decisions employers will need to consider over the next six months. Rest assured this blog will keep you up to date on the latest.