Business & People
Strategy Consulting Group, LLC

Fair Labor Standards Act 2016

WHAT EMPLOYERS NEED TO KNOW ABOUT THE NEW LAWS UNDER THE FLSA

Welcome

Business & People Strategy Consulting Group

Free Webinar Series

Labor, Employment & HR Laws and Practices

Website: www.bpscllc.com

Today's Presenter

Dr. Carlyle Rogers

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- Over 25 years' experience with HR, compliance, labor & employment law
- Doctorates in Jurisprudence (JD) and Psychology (PsyD)
- Certified Interrogator and Member of the Association of Reid Trained Investigators
- Author of "Dirty Little Secrets: Declassifying the Employment Game"

Today’s Agenda

The History

Minimum Salary Threshold

Highly Compensated Employees

Automatic Increases

Other Important Parts of the Law

The Impact on Employers

What Employers Need to Do

The History

The Fair Labor Standards Act establishes minimum wage, overtime pay, recordkeeping and youth employment standards in the private sector and in Federal, State and local governments.

The federal minimum wage is $7.25 per hour (effective July 24, 2009).

Sets forth standards and minimum salary thresholds for exempt employees.

The History

Two years ago President Obama challenged the US Department of Labor to revise the existing laws under FLSA.

The revised laws were released in May and are effective December 1, 2016.

Minimum Salary Threshold

The Final Rule increases the new minimum salary level required for the executive, administrative, and professional “white collar” exemptions from $455 a week ($23,660 per year) to $913 per week ($47,476 per year).

This exceeds the minimum salary threshold for California exempt employees under these classifications.

Minimum Salary Threshold

Up to 10% of the salary level for these “white collar” exemptions can be met with **nondiscretionary bonuses**, incentive payments, and/or commissions if the employer pays them at least quarterly.

These payments must be made on at least a quarterly basis.

Employers can use a catch-up payment to maintain the exemption if an employee doesn’t receive enough in nondiscretionary bonuses and incentive payments in a given quarter to remain exempt.

Highly Compensated Employees

The Final Rule increases the minimum compensation level required to meet the separate "highly-compensated employee" exemption from $100,000 to $134,004 per year.

At least $913 per week must be paid on a salary basis.

Employers may continue, however, to count bonuses, commissions, and other nondiscretionary compensation paid at least annually to the total annual HCE threshold.

This doesn't have an effect on California employers.

Automatic Increases

These salary/compensation levels will automatically increase every three years.

For the executive, administrative, and professional exemptions, the salary will be adjusted to the 40th percentile of full-time non-hourly workers in the region of the country with the lowest average wages.

For the highly compensated employee exemption, the salary will be adjusted to the 90th percentile of full-time non-hourly workers nationally.

Other Important Notes About the Law

The Final Rule increases the minimum salary that must be paid to employees in computer-related occupations to $913 per week, but leaves the existing alternative hourly rate of $27.63 intact.

California: The minimum salary for those classified under the Computer Professional exemption must be paid no less than $87,185.14 in 2016.

Other Important Notes About the Law

The Final Rule does not affect the outside sales or inside retail sales exemptions, which do not include a salary threshold, nor does it affect the current duties tests for the "white collar" exemptions.

There are no changes to the requirements for meeting exemption under the Executive, Administrative and Professional exemptions.

The Impact on Employers

For most states, this significantly increases the minimum threshold for exempt employees ($23,660 to $47,476).

For California, it increases the 2016 minimum from $41,600 to $47,476.

Failure to adjust to the minimum threshold or transition to non-exempt will increase the chance of misclassification lawsuits with expensive legal costs, penalties and fines (i.e., overtime, back pay, meal period violations, etc.).

What Employers Should Do (Reviewing Exempt Employees)

Review your exempt employees to:

(a) Make sure they are truly exempt, and

(b) Increase those below the threshold to the minimum OR transition to non-exempt.

If transitioning to non-exempt, remember that you are required to:

(a) Track hours worked and meal periods taken,

(b) Pay overtime premiums

What Should Employers Do (Nondiscretionary Compensation)

For most states, this significantly increases the minimum threshold for exempt employees ($23,660 to $47,476).

Ensure that bonus and commission plans clearly state the requirements for earning the incentive compensation and minimize any employer discretion involved in determining payouts.

Where employers would otherwise be able to exercise discretion, provide clear definitions of how an employer would make decisions under the plan.

Clarify that the payments will be made on at least a quarterly basis.

Provide that if the employee makes less than a minimum anticipated threshold in any given quarter that you will make a "catch up" payment to the employee.

Important Reminder

Nondiscretionary bonus or incentive payments made to a nonexempt employee must be included in the regular rate when calculating overtime pay and paid sick leave (California employers)…another reason to classify employees correctly.

If it is found that an employee is misclassified as exempt, all of the nondiscretionary compensation will be used when calculating damages.

Final Thoughts

The revisions to the FLSA and Equal Pay Act (along with a myriad of other critical laws in the past few years) have set the stage for serious litigation.

Employers should review and ensure that their compensation programs and exempt classifications are clearly defined and compliant.

California employers should also be sure that commission and nondiscretionary bonus plans are clearly defined and presented to affected employees (this is a state requirement).

Thanks for Attending Today's Webinar

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If you need assistance or would like to talk to us about your needs, please feel free to contact us at any of the following:

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