



FLSA: Ready or Not, Here it Comes A Few Key Points to Consider

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We expect that you've gotten more than several emails with information about the new "exempt / non-exempt" classification of employees. For many organizations, there's so much that should be done, but time is limited. This newsletter highlights two main issues to tackle related to the new regulations:



1. Position Description and Analysis

Focus on positions that may be "on the bubble" based on job duties first; these positions meet the first compensation hurdle but may not meet the second, the "job duties" test. For these positions, you need to analyze and document the essential and non-essential job functions and detailed position responsibilities. This requires more than listing tasks the way most job descriptions do. Based on the definitions in the regulations, determine whether a position meets the exempt requirements. This requires a thorough analysis based on factors such as level of influence and decision making authority, AND you need to document the percentage of time committed to each function in order to determine an accurate status. The American Disability Act (ADA) also requires an analysis of physical requirements and limitations for each job, and this should be included in the job description document. These are just a few of the criteria to consider.

2. Compensation for Non-Exempt Positions with Salaries over \$47,476

For cases where the position description analysis above indicates that the job is "non-exempt," you need to develop a compensation strategy. Many businesses don't have the cash flow to just pay the required overtime, yet maintaining good morale is also important. In some cases, it is hard to achieve both goals, but here are some options to consider:

- Restructure your workforce and hire additional resources to off-load duties in order to eliminate overtime worked by key employees. The goal would be to transition lower level duties to someone at a lower hourly rate.
- Set a target compensation for the position for the year (or quarter). Lower the individual's compensation enough to estimate the amount of overtime they anticipate working that year and pay the overtime as it is worked. In order to keep the employee whole, provide a year-end bonus to make up the difference. A good relationship and clear communication with the employee is critical to this approach.
- Calculate overtime rates for non-exempt salaried employees using the alternate method allowed by the Department of Labor (www.dol.gov). That formula effectively reduces the hourly rate of the salaried individual as the person works more overtime during a workweek. There is still overtime pay, but it is less than time and a half. Administratively, this may be cumbersome but will save the organization some money.

A few reminders:

1. New regulations are scheduled to go into effect on December 1st.
2. If there is a challenge, it is incumbent on the employer to substantiate the position classification and provide the analysis.
3. Most employers must comply regardless of the size of the company or organization. There are a few exclusions that are shown on the DOL website (www.dol.gov).

If you need assistance with interpretation or analysis, do not hesitate to contact an external resource for counsel.

The Warren Whitney team is ready, willing, and able to help! Please contact Beth Williams, Director of Human Resources, with any questions. We would welcome the opportunity to have a conversation about your organization. Contact BWilliams@warrenwhitney.com or at (804) 301-8009.