

New FLSA Salary Threshold for Exempt Employees On Hold for Now. What Should Employers Do?

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In case you hadn't heard, on November 22, 2016, a federal judge prohibited the U.S. Department of Labor's new regulation from taking effect on December 1, 2016. The regulations would have, but for the Court's injunction, increased the salary threshold for exempt employees from \$455 per week to \$913 per week. The injunction applies in all fifty states and is in place until further notice. Employers, therefore, may continue to treat as exempt from overtime those employees who satisfy the job duties test for white collar exemptions and who are paid a minimum salary of \$455 per week (about \$23,600 per year) and do not have to raise their pay to \$913 per week (about \$47,476 per year).

Many employers, however, anticipating the new rule would go into effect as the DOL planned, already re-classified certain employees as non-exempt or raised employees' salaries to meet the new exemption threshold. Other employers are (were) in the process of preparing for compliance. Still others still have no idea what's going on. So, depending on into what group a particular employer falls, what should that employer do now that the rule has been put on hold?

Legally, there is nothing anyone is required to do (for the time being). The DOL could appeal the injunction, but that would take some time, and the Department of Labor has not yet said whether it plans such an appeal. The Court could also lift the stay of the regulations after a full hearing in the

coming months, but the new Trump administration may not be keen on pressing for the rule's implementation. On the other hand, Congress could step in to make clear that the DOL had it right. But none of this is going to happen in the next few weeks, and for now, the new rule is on the shelf.

So, if you're an employer who waited until the last minute (or had no idea what was coming), you got lucky and your procrastination paid off. If you knew what was coming, but had not yet implemented or announced your changes, you're not compelled to go through with your plan, but can if you'd like to. But if, however, you had already started (or announced the intention to start) paying employees a higher salary, or if you changed your former exempt employees to non-exempt (entitling them overtime) before making the decision to reverse course or to not implement changes already communicated to your employees, consider:

- The costs incurred such as lower employee morale, productivity, and turnover, and administrative costs that may be incurred to reverse course;
- Whether reversing course or not implementing the changes will put you at a competitive disadvantage in relation to your industry peers who may keep the changes in place or implement the changes anyway; and
- Whether you should send an appropriately-tailored message to your workforce, if these changes were widely known and expected, or to the segment of the workforce affected by these changes, explaining your decision.

Unfortunately, there is no right answer and each situation must be evaluated separately. But be aware that, if you have implemented the new wage thresholds or paid otherwise exempt employees overtime, and you decide to reverse course to the previous set up, you can't recoup the additional amounts paid – your change back to the old way must only be prospective.

In any event, if you elect not to move forward with the arrangement contemplated by the new regs (i.e., the ones currently on hold), we advise that you closely monitor the status of this rule and know that the status of the rule may change at a moment's notice. We will also keep you informed as to any updates. In the meantime, if you have any questions, please give us a call. We're here to help.

**HERE
NOW.
HERE
WHEN YOU
NEED US.**



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