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Exempt or Nonexempt
3 Strategies to Ease Employee Reclassification

Summary

Changes to overtime rules beginning December 1, 2016 will qualify millions of additional employees for overtime pay. Consequently, many employers will be determining which employees qualify as exempt or nonexempt under the new rules. This paper examines:

• The increase in the minimum salary threshold for overtime

• Reclassification options for employers

• Common errors and important considerations when reclassifying employees

• Three strategies to ease reclassification issues

Who should read this?

Payroll and HR professionals who are:

• Facing increased labor costs with the new overtime threshold

• Considering reclassifying employees as exempt or nonexempt

Why Reclassify?

After the Department of Labor (DOL) announced it will increase the salary thresholds for overtime exemption on December 1, 2016, many employers started undertaking massive efforts to examine employee classification as exempt or nonexempt.

DOL announced the minimum salary threshold for overtime exemptions will more than double starting in December 2016. This means millions of additional employees will qualify for overtime.[1]

	Current		Effective December 1, 2016	
	Annually	Weekly	Annually	Weekly
Standard Employee Threshold	$23,660	$455	$47,476	$913
Highly Compensated Employee Threshold	$100,000		$134,004	

Fig 1. Current salary threshold versus new threshold changes effective December 2016

Reclassification allows employers to make strategic decisions about how the new rules will affect employees, their pay, and their organization's labor budget.

3 Reclassification Options for Employers

Employers have three options when reclassifying previously exempt employees who will qualify for overtime under the new rules.

- *Shift from salaried to hourly.* Reclassify an employee from salaried to hourly and pay overtime. (This means the employee will need to start tracking his/her work hours.)
- *Pay salary overtime.* Keep the employee on salary and pay overtime (which also requires the employee to track time).
- *Increase salary.* Increase the employee's salary above the new level to exempt the employee from overtime pay (assuming the job responsibilities meet the DOL's job duties test for exemption).

Exempt or NonExempt?

Under the new rules, an employee can be exempt from overtime pay if the employee is paid above the minimum salary threshold and meets exempt job duties requirements.[2]

When reclassifying employees, it's important to remember reclassification must be considered on a case-by-case basis. Avoid these common errors:[3]

- *Don't rely on assumptions.* Statements like, "Everyone in the industry classifies this position as exempt," or "All salaried employees are exempt," get employers into trouble. Actual duties—not job title—determine an employee's status.

- *Job duty ratios matter.* If an employee performs a combination of exempt and nonexempt duties, consider:
  - *Is the main work or most important duty an employee performs exempt or nonexempt?*
  - *Does the employee spend more than 50% of work time on exempt duties?*
  - *How important are exempt duties vs. nonexempt duties?*
  - *How much supervision is required to perform the duties?*
- *Check state laws.* The more restrictive laws governing employee classification decisions come from the state level, so be aware of your state's laws as well.
- *Don't forget about back pay.*[4] If an employee's duties have not changed and the employee would have qualified as nonexempt prior to overtime rule change, the employee has been misclassified. This means the employee has grounds for a potential lawsuit and may warrant back pay.

3 Strategies to Ease Reclassification

Reclassification is a transition that must be managed carefully to maintain employee alignment and morale. Here are three strategies to ease your reclassification process.

1. Communicate with employees[5]

During reclassification, Shelly Price, writer at HeliosHR.com, suggests employers engage early with supervisors to keep them informed and ahead of the conversation, communicate as frequently as possible with impacted employees, identify a point person to handle employee questions and concerns, and demonstrate appreciation for employees' contributions (since reclassification can cause some employees to feel less valued).

2. Assess current classifications

Get familiar with exemption conditions, including DOL's "job duties" tests[6] for standard and highly compensated employees. Review current employee status against exemption criteria and reclassify accordingly. Factor in back pay as necessary and document your decisions. Then create a rollout schedule and communicate it clearly.

3. Get time tracking in order

Adopt time tracking technology and policies that encourage accurate data tracking (including logging after-hours time like checking email at night). Clearly communicate your overtime policies and monitor overtime with alerts and notifications to keep your labor budget on track.

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Conclusion

Correctly classifying employees as exempt or nonexempt is crucial to overtime compliance. But employers have room to make strategic decisions when considering whether to keep nonexempt employees salaried or hourly, or increase their pay to meet the new salary threshold.

To ensure compliance, reclassification should be considered on a case-by-case basis and take into account the importance and prevalence of exempt and nonexempt job duties. Throughout this process, employers that communicate with employees, establish a process to assess current status, and get time tracking procedures in order can ease employee concerns and smooth the transition.

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Attendance on Demand supports the labor management needs of thousands of companies and nearly one million employees across North America. Launched in 2006, Attendance on Demand is a rapidly deployed, cloud-based solution that minimizes a company's risk and technology investment while providing advanced features for securely managing labor data—calculating pay rules, scheduling employees, budgeting labor, automating recordkeeping for labor law compliance and managing employee status and reporting for the Affordable Care Act. With standard uptime over the industry average of 99.995% and above average customer retention rates, Attendance on Demand removes the worry of maintaining expensive infrastructure. An extensive North American distribution network helps organizations use Attendance on Demand to reduce labor expenses and improve decision making.

This document simplifies complex regulations as they are understood by Attendance on Demand, Inc. It is not to be taken as legal advice. For further information about overtime compliance, contact the U.S. Department of Labor at www.dol.gov.

References

1   U.S. Department of Labor, Wage and Hour Division. "Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees." DOL.gov. May 2016. PDF. Accessed 13 Jun 2016. https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.pdf

2   U.S. Department of Labor, Wage and Hour Division. "Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees."

3   Taber, Joyce E., et al. "To Reclassify or Not to Reclassify? Practical Advice on FLSA Misclassification Issues." ACC.com. 6 Mar 2014. PDF. Accessed 13 Jun 2016. https://www.acc.com/chapters/ncr/upload/Slides-Reclassification.pdf

4   Taber, Joyce E., et al. "To Reclassify or Not to Reclassify? Practical Advice on FLSA Misclassification Issues."

5   Price, Shelly. "The Cultural Problems of Reclassifying Exempt Employees to Non-Exempt." HeliosHR.com. 3 Nov 2015. Web. Accessed 13 Jun 2016. http://www.helioshr.com/2015/11/the-cultural-problems-of-reclassifying-exempt-employees-to-non-exempt/

6   U.S. Department of Labor, Wage and Hour Division. "Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees."

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