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executive, administrative and professional exemptions.

**Taija Sparkman** • Sep. 09, 2015



The deadline is fast approaching to comment on Department of Labor's published proposed changes to overtime exemptions under the Fair Labor Standards Acts. Commenting is open to the public until September 4, 2015. After this time, the DOL will review the feedback to determine what, if any, changes should be made. Any new rules will be published in 2016.

The proposed changes would double the salary requirement to qualify for the executive, administrative and professional exemptions, raising the salary threshold

to the 40th percentile for white collar exemptions and to the 90th percentile for

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work closely with your clients to perform a yearly review and adjustment of employees' salaries to ensure continued compliance with the annual automatic increase rule.

If states decide to update their salary threshold in response to the new proposed rules, you will need to help ensure your clients are complying with the higher minimum salary requirement.

### **Changing an Employee from Non-Exempt to Exempt**

Most employees are classified as non-exempt, and very few will meet the requirements to be considered exempt. If your clients do have an employee whose classification need to be changed from non-exempt to exempt, make sure the employee meets all the applicable exemption criteria:

- Ensure compliance under federal and applicable state laws. Generally, exempt employees must be paid a predetermined salary, regardless of the quantity or quality of work performed. If you are unsure if a client's employee meets the minimum salary and duties requirements for an exemption, then he or she should remain as non-exempt.
- If it is determined that an employee needs to be reclassified, work with your clients to draft written communication that will be delivered to the impacted employee in advance. The communication should explain the impact of the change, clearly stating the employee is not entitled to overtime pay, as well as any new procedures for timekeeping, absences or deductions in pay.
- Remind your clients that they are limited in the types of deductions they may take from an exempt employee's salary. Most deductions are generally prohibited, but employers may make a deduction when an employee is absent for one or more full days for personal reasons or from the first or last week of work if an employee did not work the full week.

## Changing an Employee from Exempt to Non-Exempt

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- Make sure your clients communicate any change in exemption status in writing, and in advance when possible. Any communication should detail the impact of the change to the employee, as well as the potential benefits, such as receiving overtime pay for working more than 40 hours in a workweek.
- Assist your clients in preparing FAQs to commonly asked questions the impacted employee(s) may have about timekeeping, benefits and other classification issues.

### What Should Your Clients Do Now?

- If you and/or your clients have not already commented on the proposed rule changes, do so before September 4, 2015.
- Take this time to review exempt classifications for all employees with your clients to ensure they still qualify under the current duties tests.
- Assess the number of employees that could potentially be affected by the new rule changes and determine if your clients will need to:
  - o Reclassify the impacted employees as non-exempt and pay them overtime whenever they work more than 40 hours in a workweek; OR
  - o Raise their salary to meet the new requirement.
  - o Adjust the budget to account for salary increases and/or increased overtime costs.

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