Affordable Care Act. So it's concerning that many employers are not fully prepared to navigate the new rules.

Joe DeSilva • May. 23, 2016

In July 2015, the U.S. Department of Labor (DOL) proposed changes to the Fair Labor Standards Act (FLSA) that would substantially overhaul overtime pay rules.

The proposed changes more than double the salary threshold that helps determine whether workers are eligible for time-and-a-half pay when working more than 40 hours per week. If finalized, these changes will make nearly five million workers eligible for overtime pay as early as this year, unless their salary is raised.

In March 2016, the DOL submitted the proposal to the Office of Management and

percent of midsized employers said they're aware of and taking actions to comply with the new overtime regulations.* That means many of those businesses could potentially face substantial penalties down the road for noncompliance. Last year alone, Seyfarth Shaw estimates that the number of wage and hour lawsuits rose nearly eight percent to 8,781 cases.

Here are a few steps businesses should take now to prepare.

- **Ensure compliance with existing rules.** Review existing employee classifications to ensure that your "exempt" employees are properly classified under current rules. For example, this means that employees who receive less than $455 per week are considered "non-exempt" and must be paid at least minimum wage and overtime.

- **Identify which employees meet the administrative, professional, or executive exemption.** Figure out which employees are exempt and currently earn at least the current minimum of $23,660, but less than the proposed minimum of $50,440 per year. Determine how many hours these employees typically work per week and be sure to factor in any fluctuations in hours during peak periods.

- **Compare the costs of raising employees' salaries.** Weigh the costs of raising employees' salaries to meet the proposed exemption criteria against what it would cost to reclassify them as non-exempt and pay them overtime when they work more than 40 hours a week. If an employee's salary is closer to the current minimum ($23,660) and they rarely work overtime, it might make sense to reclassify them as non-exempt. Conversely, if an employee's salary is closer to the proposed minimum ($50,440) *and* they frequently work overtime, you may consider raising their salary to maintain the exemption.

- **Consider the impact on internal pay equity.** Beyond the costs of raising exempt employees' salaries, consider the impact on internal pay equity. Internal equity means employees are paid fairly when compared with other employees within

materials, including fact sheets, articles, legislative updates, infographics, calculators, and a schedule of free webinars to help companies understand the financial impact of the proposed changes

- **Two online calculators**. These are designed to provide a simple assessment of the annual impact at the federal level of paying overtime versus raising salaries to meet the anticipated new threshold of $50,440 per year. One of two calculators estimates this for the organization as a whole; the second helps employers view options for an individual employee, including an estimated cost-neutral wage based on the overtime that person works.

- **A series of free webinars.** ADP has partnered with Littler Mendelson, one of the nation's leading employment and labor-law practices, to help employers learn more about the pending overtime changes and best practices to avoid wage and hour mistakes. Register here for the upcoming webinar on April 20 at 1 p.m. ET.

The main takeaway: Start developing a plan now to implement any changes once the final rule becomes effective. Consider how these changes will impact reclassified employees and develop a communication plan to address questions they may have related to timekeeping and pay. We will provide updated information and guidance once the final rule is published.

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