

Overtime Regulations

Problem:

On Dec. 1, 2020, the DOL increased its overtime threshold to \$35,568, representing a boost from the previous salary cutoff of \$23,660 enacted in 2004. Workers earning up to \$35,567.99 qualify for the time-and-a-half overtime premium when they work over 40 hours in a week. While this standard extends overtime wages to 1.3 million employees, companies already offering salaried workers more than \$35,000 will not be subject to the new rule.

According to the Fair Labor Standards Act (FLSA), workers are not owed overtime pay if they are: 1) salaried; 2) earning more than a certain amount per year; or 3) working in an executive capacity. Under current Department of Labor (DOL) regulations, to qualify for an executive exemption, “...an employee’s primary duty must be managing the enterprise or managing a customarily recognized department or subdivision of the enterprise.” Because of their rate of pay and type of work performed, exempt employees are not eligible for overtime pay beyond 40 hours worked in a week, whereas nonexempt employees must be paid time and a half for any hours worked more than 40 hours in a work week.

- Increases to the salary threshold is challenging for smaller employers making tough choices on payroll, staffing, and benefits, especially for those businesses in rural communities or regions with lower costs of living, as well as multi-state small businesses paying workers different salaries for different regions.
- Nonprofits and other small-business employers lack budgetary flexibility to absorb higher labor costs, forcing them to make tough choices, particularly restaurants and small retailers who often cannot immediately increase revenues to justify a pay increase.
- By the current standards, small businesses will sometimes alternate between: a) giving managers a raise and reclassifying them as overtime-eligible, while tracking their hours, with the decision commonly centered around how many employees are affected; or b) provide employees with a salary increase in lieu of a usual bonus.
- Adding an additional layer of concern, federal standards are frequently supplanted by different overtime standards under state or city laws.

Solution:

DOL is expected to announce whether further changes will be made to the current overtime threshold standards sometime during spring 2023. NSBA continues to urge the small-business community to communicate with the DOL regarding their experiences and ideas for improvements and protections against excessive wage gaps.

- The creation of new hourly reporting and tracking requirements will have a disproportionate burden on smaller firms.
- increases could force smaller, already-struggling firms to reduce employee hours, as well as damage employee morale for technical downgrades from exempt managers to non-exempt workers.
- Future changes to overtime rules should take the unique circumstances of smaller workforces more fully into consideration.