



The Soto Law Group, P.A.

LABOR AND EMPLOYMENT PRACTICE GROUP

Legal Information for the Construction Industry
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EMPLOYERS! The time has come to prepare your business for upcoming changes in federal overtime regulations.

Generally, the Fair Labor Standards Act (“FLSA”) requires that most employees receive “overtime pay at time and one-half their regular rate of pay for all hours worked over 40 in a workweek.”¹ However, Sections 13(a)(1) and 13(a)(17) of the FLSA provide an exemption to this rule for the following employees:

1. employees who are employed as bona fide executive, administrative, or professional employees;
2. computer professionals;
3. highly compensated individuals; and
4. outside sales employees.

In order to qualify, these employees must meet certain criteria for their job duties and be paid at least \$455 per week or \$23,600 annually.

In March of 2014, President Obama issued an executive order directing the United States Department of Labor (“DOL”) to update these requirements due to concerns that inflation had rendered the \$455 per week threshold ineffectual (the threshold was last updated in 2004). The DOL announced its proposed changes in June of 2015 and recommended more than doubling the current salary threshold to \$970 a week or \$50,440 annually.

If this increase is approved, all of your employees employed in the aforementioned positions and who are currently making less than \$970 a week, or \$50,440 annually, will become nonexempt and eligible for overtime pay regardless of whether they meet the FLSA requirements concerning their job duties. However, even if you pay these employees more than this salary threshold, they will still be nonexempt and eligible for overtime pay if they fail to meet the duties requirements.

No one will know for sure what the actual updated salary threshold amount will be until the final rule is published, which could be as soon as June 1st of this year. The final rule will be published in the *Federal Reporter* and take effect within 60 days of publication. Although efforts are being made to prevent the proposed changes from taking effect, now is the time to develop a plan for employees that may become nonexempt.

¹ U.S. Department of Labor, “Fact Sheet #171: Blue-Collar Workers and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA), July 2008, http://www.dol.gov/whd/overtime/fs171_blue_collar.pdf.

Consider the following options:

1. Give raises to nonexempt employees so that they meet the new salary threshold if the cost of having to paying them overtime is greater;²
2. reduce the number of hours these employees work; or
3. use an hourly pay rate that is equal to the same weekly compensation as the employee's salary.³

For our construction clients, keep in mind that your non-management employees who are covered under the FLSA and employed in any of the following occupations are entitled to overtime pay under the FLSA and are not exempt under Section 13(a)(1) no matter how much you pay them:

- production-line;
- maintenance;
- construction; and
- similar occupations such as carpenters, electricians, mechanics, plumbers, iron works, craftsmen, operating engineers, longshoremen, construction workers and laborers.⁴

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² Michael Cardman, Xpert HR Blog, "A 5-Point Action Plan for the New Overtime Rules from Someone Who Knows," March 18, 2016, <http://www.xperthr.com/blog/2016/03/18/5-point-action-plan-new-overtime-rules-someone-knows/>.

³ *Id.*

⁴ U.S. Department of Labor, "Fact Sheet #171: Blue-Collar Workers and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA), July 2008, http://www.dol.gov/whd/overtime/fs171_blue_collar.pdf.