

This year has been interesting to say the least. A lot is going on in the country, in our State, and in our cities. Of concern for most of you is the moving “minimum wage”. You have seen posts regarding different cities increasing their minimum wage in the middle of the year which is higher than the State minimum wage and now the federal government has released the new minimum wage requirement for exempt (salaried) employees. This “moving target” causes

concern in that everyone has to take responsibility for keeping up with these changes and the rules are not always that simple to interpret.

As an example, Los Angeles County updated its minimum wage to cover employers in unincorporated areas in the county of Los Angeles. If you are unsure if your business is in an unincorporated you can go to:

<http://ceo.lacounty.gov/forms/unincorp%20alpha%20web.pdf>

## Minimum Wage Requirement for Exempt (Salaried Employees)

*Effective December 1, 2016*

- The salary threshold - The rule stipulates that the annual salary an employee has to be paid to be considered exempt under the FLSA is \$913 per week or \$47,476 per year. Outside sales employees are still exempt from the salary requirements and there may be other exceptions (very few and very specific. These will not affect you unless you are a private school).
- The threshold will increase every three years.
- Nondiscretionary bonuses count toward the threshold - Other than for highly compensated individuals, nondiscretionary bonuses haven't counted toward an individual's salary and, therefore, couldn't help employers push workers over the exemption threshold. But the final rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the new \$47,476 salary level.
- The duties tests won't change. Many employers and business groups feared



that, in addition to what everyone knew would be a big jump in the salary threshold, the DOL would alter the duties tests for the professional (a.k.a., white collar) exemptions. Specifically, early indicators were that the DOL would look to adopt a California-style rule in which employees would be required to spend more than 50% of their time performing exempt duties to be classified as exempt. But the DOL decided to leave the duties tests alone.

- You get more time to comply. All along, the DOL had been hinting that employers would only get 60 days from the time the final rule was pub-

lished, until they had to be in compliance. But the final rule says employers have until Dec. 1, 2016 to get their payroll processes in order.

Some employers may decide to reclassify affected exempt employees to non-exempt status to avoid having to increase their pay. But this requires all that comes along with being a non-exempt (hourly) employees.

***Are you ready for the three most difficult conversations you've had in a while?***

Financial implications aside, this creates a huge management problem:

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*Salaried continued*

The change in classification could feel like a demotion to employees.

**They'll blame the DOL, right?**

If you think employees will curse the Obama Administration for what could essentially be an overnight change in their work arrangements/classifications, you're in for disappointment.

Odds are the average worker's going to blame you, their employer. After all, not everyone keeps up to date with what the feds are doing. So, on its face, the shift from exempt to non-exempt status may come off looking like something your company did for its own benefit — unless you're willing to set the record straight right now.

It's time to prepare for these awkward employee conversations:

**1. Compensation conundrum**

Companies are facing a crisis of compensation. And this is the No. 1 question you should be pondering now:

■ Do we expect newly non-exempt employees to be as productive working strict, 40-hour workweeks? (Note: This is assuming you're not going to leave the door open for them to collect overtime on top of their regular pay.)

If your answer is no, that begs three more questions:

■ Will you decrease their pay and allow them to work OT to catch up?

■ Are you willing to be lenient and allow them to work some overtime? or

■ Will you lessen their workloads?

No matter the determination you arrive at, it'll require a carefully-crafted conversation — and that goes double if you're taking duties off of someone's plate.

**Reason:** Your better employees will look at the move as you taking responsibility away from them — again, a demotion.

**2. 'Status drop' disappointment**

Adding to the perceived notion that they're being demoted is employees' loss of a salary.

Many view earning a salary as a rite of passage — after years of punching a time clock, they feel they've finally reached professional status. But unless you're willing to pump up these folks' salaries above the new FLSA threshold, that status is about to change. In other words, they'll feel like being reclassified as non-exempt — and having to punch a time clock — is a loss of status.

This perception will be magnified 10-fold if they're left out of after-hours business discussions in which they were previously included to prevent them from making OT. This perception problem puts the onus on HR and employees' managers to evaluate individual situations and find a way to assure employees they're not being

“demoted” or “losing status.”

**3. Flex time talk**

In a recent survey, 67% of HR pros said if the new rules lead to increases in OT eligibility and OT pay, it's likely that employees will have decreased flexibility and autonomy.

After all, a lot of employees will have to start punching a time clock who haven't done it before (or at least haven't for a long time). That means arriving late and leaving early will result in less pay when it didn't before — and telecommuters will feel as though Big Brother's starting to watch them.

One way to sell employees on the idea of becoming non-exempt is to position the move not as a loss of flexibility, but as a definition of structure. Their hours will now be finite — and if they were working over 40 hours before, they can now spend that time with family and friends.

**Minimum Wage Requirements for Non-Exempt (Hourly) Employees**

On April 4, 2016, Governor Brown signed a bill that will increase the minimum wage in California to \$15 per hour by 2022. There is a one year implementation delay for companies employing 25 or fewer people.

Date	Employers With 26 or More Employees	Employers With 25 or Fewer Employees
1/1/17	\$10.50/hour	\$10.00/hour
1/1/18	\$11/hour	\$10.50/hour
1/1/19	\$12/hour	\$11/hour
1/1/20	\$13/hour	\$12/hour
1/1/21	\$14/hour	\$13/hour
1/1/22	\$15/hour	\$14/hour
1/1/23	\$15/hour*	\$15/hour*

\*Once the minimum wage reaches \$15 per hour for all businesses, wages could then be increased each year up to 3.5 percent (rounded to the nearest 10 cents) for inflation as measured by the national Consumer Price Index.

Please remember that your individual city may have different minimum wage requirements than the State.

# Transgender Issues in the Workplace

I'm sure you've heard enough about this issue, but I thought it valuable to include this in the newsletter. The EEOC and DOJ strengthened their stance on transgender discrimination. The EEOC published a fact sheet confirming its stance that it's a civil rights violation not to allow transgender individuals to use the bathrooms associated with their gender identities.

In the fact sheet, the EEOC took this time to point out that "Contrary state law is not a defense under Title VII." It clearly shows the agency is serious

about protecting individuals on the basis of their age, race, sex (including gender identity) and disability.

## What does OSHA say about it?

In the past, other federal agencies have weighed in on this issue, such as OSHA, which recently published: "A Guide to Restroom Access for Transgender Workers." In it, OSHA clearly states that employers should allow all employees, including transgender individuals, to have access to restrooms that correspond to their gender identity.



## Form I-9 for New Hires

The U.S. Citizenship and Immigration Services (USCIS) announced that employers must continue to use the current version of the Form I-9 even though it has an expiration date of 3/31/2016. Regulations to update the form are pending. Use the version with the March expiration date until a new form is approved and the USCIS posts an updated form on I-9 Central.



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