



Overcoming The New Overtime Rules Blues

ERA recognizes that in recent days you've been bombarded with information about the new overtime rules. And, if you are like me, just the sheer volume of data on this topic may have you a little frenzied. Or, you might not be distracted by all the media attention but are overwhelmed in your effort to understand the implications and figure out what decisions you need to make to comply with the new legal requirements.

As part of ERA's on-going commitment to keeping our members compliant, we are offering practical and strategic solutions to help make the process of determining how to deal with the new overtime requirements manageable. We're maintaining all of our Overtime Practical Solutions materials at ERA's virtual library. On a periodic basis, we'll add educational materials, including articles, charts and other practical tools to help get you through this seemingly overwhelming process. You can find the library at: www.hrxperts.org/library.

In addition, we will be hosting several training classes and webinars featuring the newest addition to our Consulting Team, Barbara Barrett, who is a former Senior Investigator for the U.S. Department of Labor, Wage & Hour Division. Click [here](#) to see Barbara Barrett's full biography.

It seems to me that one of the best ways to cure the "overtime blues" you may be experiencing right now is by following the prescribed regimen of treatment: (1) taking a deep breath – do not panic, (2) educating yourself with expert and practical, easy to understand knowledge offered by ERA, and (3) being methodical in your review process. Following this regimen will ensure that you get through the process timely (by December 1, 2016) and make strategic decisions that work best for your business operation. I can't guarantee that you – or your employees – will be pleased with the outcome but you will have fully vetted all options as you come into compliance with the new requirements.

Here's an overview of the Basics of how overtime works and what the new requirements apply to, followed by a couple of Practical Considerations.

Overtime Basics

The law requires employers to pay an overtime premium to workers who work more than 40 hours in a workweek, unless the worker is exempt from overtime. Customarily, for an employee to be exempt from overtime, s/he must: (1) be paid on a salary basis, (2) be paid a minimum salary amount, and (3) perform certain duties and responsibilities. The new rule substantially increased the salary amount from \$23,660 annually to \$47,476 annually.



Upcoming ERA Overtime Practical Solutions Events:

Cincinnati:

[June 1, 2016](#)

OR

[June 6, 2016](#)

Columbus:

[June 8, 2016](#)



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Practically, here's what all this means, employees who are paid a salary and are not eligible for overtime but make less than \$47,476 are in jeopardy of losing their "exemption status." The employee(s) will lose their exemption status because they are not paid enough under the new rule. If the employee(s) lose their exemption status, they become overtime eligible – and become subject to the same pay practices as hourly employees, including, pay for hours worked in excess of 40 in a workweek, tracking time, meal periods, vacations, benefits, and so forth.

Practical Consideration: Identify the Vulnerable Population

For today's practical tip, the company should identify those employees who are in jeopardy of losing their exemption status due to the rule change. To do this, review your payroll records and identify all employees who are salaried and not currently eligible for overtime pay. Any employee who is on this list and is paid a salary of less than \$47,476 is in a so-called "vulnerable position," i.e., unless the company is able to bump up their pay or they earn a non-discretion bonus or commission in addition to their salary, they are in jeopardy of losing the exemption and being reclassified as overtime eligible. Of the employees on the list, indicate whether and if so, how much, the employee earns in a non-discretionary bonus and/or commission.

Once you complete this step, you are in a position to determine, among other things, whether the position routinely works more than 40 hours in a workweek, can be effectively "managed to 40" work hours per week, or has a salary in close proximity to the new threshold. These factors, along with other business-specific considerations, will help to determine the classification for the position going forward. (By the way, it is also extraordinarily helpful to have an up-to-date organizational chart and job descriptions available when conducting the classification analysis.)

Practical Consideration: Communicate to Employees

The news coverage of this story has been widespread. Unfortunately, in the absence of communication from the Company, the media coverage – or workplace "gossip" – will shape employees' expectations about what's coming. For example, I read a story this morning stating that employees should expect an early Christmas gift on December 1 in the form of an increase in salary. This notion is simply untrue. Indeed, many employees will find out that their pay is not changing and, instead, that their position is being reclassified to hourly. So, to set reasonable expectations of employees, diffuse rumors and gossip and to effectively manage the message of whatever is forthcoming in the future, I strongly urge that the Company share information with employees on this topic. (Importantly, do not over share but provide enough information to let employees know the Company is aware of the new rule and in the process of making informed decisions.)

Sample Verbiage to Consider:

As you may already know, on Tuesday (5/17), the government issued new rules regarding who is eligible for overtime pay. The new rule does not apply to hourly employees because you are already eligible for overtime. The new requirements may, however, impact some of our salaried employees.

At this time, the company is reviewing the new requirements. Once we've had a chance to fully review the new rule, we will notify you individually if you are affected by the changes. This process may take some time. In fact, the new rule will not become effective until December 1, 2016. So, please be patient as we take time to understand the requirements and make decisions that are in line with the new government requirements. Again, if you are impacted by the changes, we will notify you once a decision has been made.

If you have any questions in the meantime, please feel free to address them with (Company HR contact information here.)

Upcoming ERA Overtime Practical Solutions Events:

[Training Class in Cincinnati with Barbara Barrett & Jeff Shoskin, Esq. - 6/1/16](#)

[Training Class in Cincinnati with Barbara Barrett & Jeff Shoskin, Esq. - 6/6/16](#)

[Training Class in Columbus with Barbara Barrett & Dawn Hays, Esq., SHRM-SCP - 6/8/16](#)

Following the training classes, Barbara Barrett will be available to address some of your individual questions. If you would like to join any of the events, click [here](#) to register.

ERA experts, including Barbara Barrett, are also available to conduct your company's job classification review or to provide consultative advice in your process. For information regarding this service please contact us at 888.237.9554.