

HR Compliance Creating an Audit-Proof Organization



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What We'll Cover



- **New Federal Overtime Rule**
- **Tips to Prevent/Prepare for a DOL or Misclassification Audit**



New Federal Overtime Rule

Are you ready?



New Federal Overtime Rule

Are you ready?

What are the New Overtime Rules?

- New salary threshold
 - (\$455/wk to \$913/wk or \$47,476/yr)
- Automatic salary threshold increases every three years (1/1/20)
- HCE salary increase - \$134,000
 - Minimum salary test & bonuses
- No changes to duties test

New Federal Overtime Rules



Why Now and How Does this Impact my Agency?

- Lack of minimum wage increases over time
- Stagnate cost of living increases
- Projected 4.2 million workers immediately eligible for overtime
- Family friendly workplaces
- All employers covered

New Federal Overtime Rules



Exempt v Non-exempt, what's the difference?

- Overtime = 40+ /wk (and/or 8+ day)
- Meal periods
- Timekeeping
- Duties test and salary test



Now

CA Minimum Wage -
\$10/hr

2x Min Wage (\$41,600)

New Federal Overtime Rules



White collar exemptions (EAP workers)

- Executive
 - *Managing enterprise, depart, or sub-division*
 - *Supervision of 2+ FTEs*
 - *Hire/Fire*
- Administrative
- Professional
- Highly Compensated

New Federal Overtime Rules



White collar exemptions (EAP workers)

- Administrative
 - *Office or non-manual work related to business operations*
- Executive
- Professional
- Highly Compensated

New Federal Overtime Rules



White collar exemptions (EAP workers)

- Professional
 - *Work requiring advance knowledge in science or learning that is intellectual in character and requires prolonged course of specialized intellectual instruction*
 - *Creative professional exemption – creative endeavors requiring invention, imagination, originality or talent*
- Executive
- Administrative
- Highly Compensated

New Federal Overtime Rules



White collar exemptions (EAP workers)

- **Highly Compensated Employee (exclude CA)**
 - Minimal Duties
 - \$134,004/yr (12/1/16)
 - 2/3 bonuses/incentive pay
- Administrative
- Executive
- Professional

New Federal Overtime Rules



White collar exemptions (EAP workers)

- Primarily Engaged
- Discretion & Independent Judgement

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- Computer
 - Outside Sales

New Federal Overtime Rules



What should I be concerned about?

- No consideration of regional differences in wages
- Loss of exempt positions and employee flexibility
- Employee perceived “demotion” and lack of “prestige” if re-classified
- Reduced pay and no overtime
- Past classification practices - tread carefully when making changes
- Bonuses count, sort of (CA excluded)

New Federal Overtime Rules



- **When is it effective and will it be delayed?**
 - December 1, 2016
- **What am I required to do?**
 - Ensure your exempt employees meet the minimum salary threshold

New Federal Overtime Rules



What should I do to prepare for the new federal overtime rule to be eff 12/1/16?

- Audit your exempt employees to ensure proper classification (salary & duties)
- Increase salaries if exempt employees will not make the minimum salary threshold of \$47,476
- Reclassify exempt positions to non-exempt positions if salary threshold cannot be met
- If reclassifying exempt positions, be sure to provide training to reclassified employees and their managers on proper timekeeping procedures and taking meal/rest breaks
- Implement strategies for misclassified employees
- Seek legal guidance for risky situations



Agency Audits

*Creating an audit-proof
organization*



Agency Audits

*Creating an
Audit-proof
Organization*

Regulatory Agencies

- FEDERAL (DOL, EEOC) – *discrimination and wage*
- STATE (DLSE, EDD) – *discrimination, wage, I.C.*
- OSHA – *safety, IIPP*

- **Why does an Audit happen?**
- Industry targets - *DOL*
- Disgruntled EE's - *DOL*
- High Ex-Mods - *OSHA*
- UE Claim Filing – *STATE (EDD)*

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Typical Audit Violations

- Wage and hour
- Exempt v non-exempt
- Timekeeping and payroll violations
- OT and Travel time
- IC v EE misclassification

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Employee vs Independent Contractor

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What happens in a DOL audit?

- Low hanging fruit - posters, workers comp
- Exempt v Non-exempt
- Record review – timesheets, pay stubs, payroll records (*download and have available*)
- Access to records – copies v camera
- Interview employees
- Request phone numbers for employees
 - inform of potential call

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What happens in a misclassification audit?

- IC file review
 - Agreement, insurance, w-9
- Incorporated contractors likely excluded
- Individuals paid under SSN high risk

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Tips for Successful Maneuvering through a DOL Audit

- Contact the RIGHT counsel
- Be nice! “I want to fully comply”
- To delay or not to delay....That is the question
- Negotiate!
- Explain industry practices
 - *Subsidized payments and child care workers*
 - *Truck Drivers*
- Consider using a consultant
- Review records in different location

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Tips for Preventing a Misclassification Audit

- **Avoid Independent Contractor No-No's**
 - Personnel Files
 - Timesheets
 - Paying fees under SSN
 - EE's and Contractors performing the same service
 - Biz cards
 - Voicemail/Email

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Tips for Preventing a Misclassification Audit

- **Strengthen IC status**
 - Incorporation – W9 Form
 - Written Agreement - termination conditions
 - Invoice – make payments based on invoices
 - Other clients
 - Insurance

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Audit-Proof your Agency by . . .

- **Conduct a mock audit**
 - Timesheets, overtime, exempt vs. non-exempt
- **Follow proper payroll rules**
 - Travel time, final pay, comp time, stand by pay
- **Keep your handbook up to date and follow it**
- **Address employee concerns timely**

Thank you!



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