

Fair Labor Standards Act (FLSA)

Fraternity Executives Association Webinar, Part II

June, 2016

Objectives

1. Support members as they navigate and create a strategy related to the final changes to the Fair Labor Standards Act (FLSA)
2. Provide an update regarding the changes and associated timelines
3. Create a forum for members to share what changes they plan to make and what additional guidance and resources they are looking for to ensure compliance
4. Discuss traveling consultant roles and House Directors; evaluate potential solutions for this role

Agenda

- FLSA summary
- Regulation and timeline update
- Your options as an employer and important factors to consider
- What you should do now
- Audience poll
- Questions
- Contact information and sources



Fair Labor Standards Act Summary

What is the Fair Labor Standards Act?



Answer:

FLSA establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full- and part-time workers in the private sector and in Federal, State, and local governments.

- Federal statute passed in 1938
- Created to prevent workers from being required to work long hours without extra compensation
- Enforced by the U.S. Department of Labor

What is the Fair Labor Standards Act?



Focus of Webinar:

Review recent changes to the law, particularly the overtime and recordkeeping provisions of the law

- Some employees are exempt (“exempt”), others are not exempt (“non-exempt”) from the overtime pay provisions
- Exemptions are narrowly defined under the FLSA
- Recordkeeping requirements for “exempt” employees are different than for “non-exempt” employees

Who is Exempt from Overtime?

Determining if an employee is exempt from overtime is based on the **type and frequency of performed duties and responsibilities**, and not solely on how often or how much that person is paid, or the preference of the supervisor.

- **Exempt status** under the FLSA include classifications generally described as:
 - Executive
 - Administrative
 - Professional (learned and creative)
 - Computer
 - Outside Sales

Exempt Guideline Examples

3 Tests to Qualify for Each Type of Exemption *(including but not limited to an evaluation of)*



Salary Basis

Pre-determined fixed salary



Salary Level

New level of \$47,476 annual



Duties Test

Executive,
Administrative,
Professional, Outside
Sales, Certain
Computer

Exempt Position Examples

Executive: President, Dean, Executive Director

Professional: Professor, Physician, Pharmacist, Engineer

Administrative: Marketing Manager, Development Officer, Accountant

Computer: Systems Analysts, Programmer, Software Developer

Outside Sales: Door-to-Door Salesman

Non-Exempt Jobs

Jobs classified as non-exempt are entitled to overtime pay

Jobs that are typically non-exempt include:

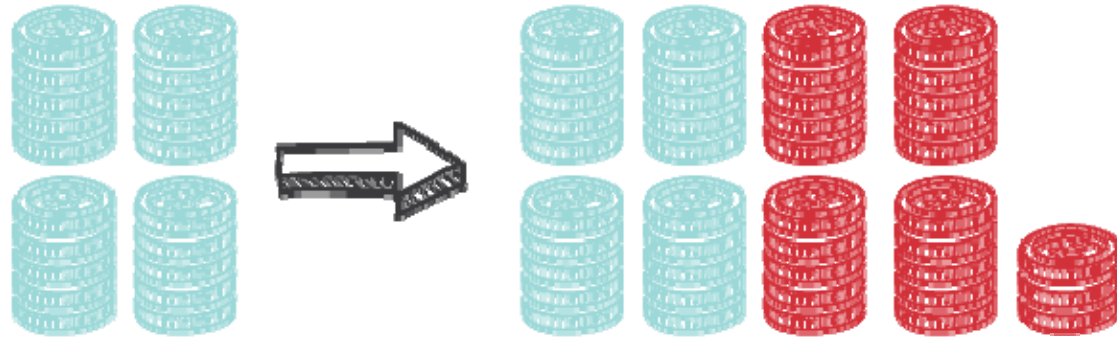
- Manual laborers and skilled-trade workers
- Customer service representatives
- Receptionists
- Stagehands
- Administrative support positions



Regulation and Timeline Update

FLSA Regulation Update

On May 18, 2016 the U.S. Department of Labor released its final rulings revising the Fair Labor Standards Act (FLSA) overtime regulations...



For employees who qualify for overtime pay by working more than 40 hours in a given week, the updated rule

more than doubles the salary level.

FLSA Regulation Update

On May 18, 2016 the U.S. Department of Labor released its final rulings revising the Fair Labor Standards Act (FLSA) overtime regulations:

\$47,476

The previous threshold of \$455 per week/\$23,660 annually has been increased to \$913 per week/\$47,476

\$134,004

The salary threshold for qualifying as an exempt "highly compensated employee" will raise from \$100,000 to \$134,004

FLSA Regulation Update

Every three years, adjustments will be made to maintain:

1. The standard salary level at the **40th percentile** of full-time salaried workers in the lowest-wage Census region
2. The HCE total annual compensation level at the **90th percentile** of full-time salaried workers national

FLSA Timeline Update

The effective date for
these changes is
December 1, 2016

What Counts as Salary?

A portion of bonus payments can count towards the standard salary level

- **Up to 10%/ \$4,747 annually** of standard salary level can come from non-discretionary bonuses, incentive payments, and commissions
- Must be paid at least quarterly or more frequently; **annual bonuses do not count** towards the standard salary level
- Bonuses cannot be discretionary
- Car allowances, per-deims, room & board, and other reimbursements do not count towards the standard salary level



Your Options as an Employer

Your Options as an Employer

1. Raise the salary for positions that qualify for exempt/salary status based on the duties test to \$47,476 annually/\$913 weekly
2. Reclassify positions that meet the duties test but not the new exempt/salary threshold to non-exempt/hourly, track their time and pay them overtime
3. Reclassify positions that meet the duties test but not the new exempt/salary threshold to non-exempt/hourly, reduce their hourly equivalent rate to offset the addition of overtime pay
4. Restructure the positions, transition some full-time positions to part-time, reduce normal "work hours," eliminate positions and/or change operational processes

After Our Last Webinar, We Suggested...

Conduct an audit to identify which current exempt/salary employees make less than \$50,440; create a list of the positions and salaries of who would fall in this range

- Assess how much overtime these employees work in a typical year
- Calculate the cost of overtime if this same position was non-exempt based on your state's overtime rules (can vary by state, see www.dol.gov/whd/state/state.htm)
- Determine the "worst case scenario" cost associated with these changes

Conduct a job analysis and ensure the job descriptions for these positions and ideally all jobs in the organization are accurate and up-to-date

AUDIENCE POLL: Which Activities Did You Complete in the Last 6 Months?



What You Should Do Now

What Should You Do Now?

- Revisit that audit based on the new threshold amount and include eligible bonuses, if applicable
- Finalize your job descriptions and determine the FLSA exemption status of each job
- **Update and review all policies and procedures that may be impacted by these changes**

Time Policies

You may have to redefine your work day and work week:



Work Hours



Flex-Time



**Emails &
Working
from Home**

Timekeeping

Rules & Systems

- How is time recorded?
- Who tracks work hours now?
- How many hours are salaried workers actually working now?

Travel Policy

- What travel hours are compensable time under FLSA?
- What is your current policy?
- How might it change?

DOL Fact Sheet:

www.dol.gov/whd/regs/compliance/whdfs22.htm

Communication

Meet one-on-one with affected employees:

- Why
- How to track time
- Clarify work hours and other policy changes

For Consultant Program & House Directors:

- Prepare membership for these changes
- Educate House Corporation Boards and other key resources
- Inform the Chapter Advisors and others on the impact of these new rules and how it may affect how consultants and/or House Directors spend their time

Benefit Programs

Review your benefit and retirement plans

- Some benefits may define eligibility by exemption status; revisit to ensure the classifications still make sense (e.g. paid time-off program)
- Some benefits may be a multiple of “salary” and may need to be revisited or clarified
- The cost associated with these benefits may change; calculate and plan for the impact

Other Compensation Programs and Policies



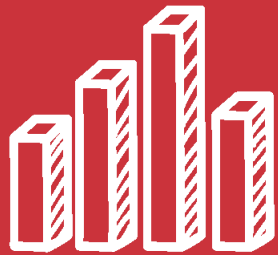
Paid Time Off



On-Call Pay

Important Factors to Consider

- Evaluate the ripple effect of making this change, especially if you choose to increase the salaries of some employees
 - Will this cause compression with supervisor?
 - Internal equity in relation to other positions?
- Don't underestimate the individual emotions involved in moving employees from exempt/salary to non-exempt/hourly
- Consider the impact on your workplace culture



Audience Poll

Audience poll questions

1. Have you included potential cost of changes in 2016 budget?
2. What successful solutions have you implemented for consultant activity tracking?
3. What changes do you plan to make?

Questions?

Your Presenters Today



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Sources

Society for Human Resource Management (SHRM)

- Society for Human Resource Management (SHRM) is the world's largest HR membership organization devoted to human resource management. Representing more than 275,000 members in over 160 countries, the Society is the leading provider of resources to serve the needs of HR professionals and advance the professional practice of human resource management.

WorldatWork

- WorldatWork is a nonprofit HR association focused on compensation, benefits, work-life effectiveness, and total rewards

United States Department of Labor (DOL)

Other miscellaneous legal alerts, publications and professional association communications