

Benefits BULLETIN

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DOL Overtime Rule Update

On Nov. 22, 2016, the Department of Labor's (DOL) overtime rule was halted by a preliminary injunction, issued by a federal judge in Texas. The rule, which was scheduled to take effect Dec. 1, 2016, would have increased the annual salary threshold for "white collar overtime exemptions" to \$47,476.

With this rule halted, employers across the country can enjoy a reprieve from having to raise salaries for exempt employees to the new threshold or pay them overtime.

However, on Dec. 1, 2016, the last possible day, the DOL filed an appeal of the Nov. 22 decision. The parties' final briefs on the appeal are due Jan. 31, 2017.

Employer Takeaways

Employers should continue watching for new developments related to the overtime rule, given the uncertainty. Until a final decision is reached in the case, employers can rely on existing overtime exemption rules.

Employers that have already made adjustments to comply with the new rule may find it difficult to reverse any changes; however, employers may decide to postpone any changes that have not yet been made.

For employers looking to roll back salary adjustments, consider employee morale before rescinding promised changes. The HR department can be a valuable resource for communicating any changes to employees.

The Future of the Overtime Rule

Supporters of the rule remain committed to what they describe as fair increases in the overtime exemption salary threshold; however, the DOL may be facing an uphill battle in implementing changes to the overtime exemptions.

In his written ruling, the judge suggested that he would side with the parties challenging the rule when resolving the case. He stated that, in issuing the rule, the DOL "exceeds its delegated authority and ignores Congress's intent by raising the minimum salary threshold such that it supplants the duties test.

However, further steps need to be taken in the court process before the rule is permanently struck down.

It is also possible that, once he is in office, President-elect Donald Trump could take executive action to block the rule, but it is not clear at this time what approach he would take to change or undo the rule. If the court strikes down the rule, further congressional or executive action may be unnecessary.

Other Issues for Employers

Although changes to the overtime exemptions may not take effect for some time (if ever), employers must continue to comply with current regulations. In preparing for the rule, many employers have discovered that employees may have been misclassified, which is an issue that must be addressed to avoid violating the current FLSA regulations.

2016 Kaiser Health Benefits Summary

Each year, the Kaiser Family Foundation and the Health Research & Educational Trust (HRET) conduct a survey to examine employer-sponsored health benefit trends. Here are the main points of the 2016 survey:

- Average premiums have risen nearly 60 percent for single coverage since 2006.
- Preferred provider organizations (PPOs) were the most common plan type, followed by high deductible health plans (HDHPs) with a savings option—covering 48 and 29 percent of workers, respectively.
- The average deductible amount for single coverage was over \$150 higher than last year—jumping to \$1,478 from \$1,318.
- The average in-network copayments were \$24 for primary care and \$38 for specialty care; in-network coinsurance amounts were 18 percent and 19 percent, respectively.
- Small and large firms both offer wellness programs, with 46 percent of small firms and 83 percent of large firms offering at least one.

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2016 Kaiser Health Benefits Summary (Cont.)

- Eighty-two percent of workers in large firms and 13 percent in small firms are covered under some sort of self-funded (partially or fully) plan.
- Of the large firms offering health benefits, 39 percent cover some health care services through telecommunication.
- Of the firms polled, 56 percent offer health benefits to some workers, which is similar to recent years.
- Of the firms offering health coverage with 50 or more employees, 2 percent offer health benefits through a private exchange.

The Presidential Election's Impact on Health Care

Donald Trump's victory in the election, along with Republican majorities retained in both the Senate and House of Representatives, will likely have a significant impact on a number of compliance issues over the next four years.

During his campaign, Trump called for a repeal of President Barack Obama's hallmark health care reform legislation, the Affordable Care Act (ACA). In addition, Trump's victory raises uncertainty over the future of other policies enacted under President Obama, including the new overtime requirements under the Fair Labor Standards Act (FLSA).

Throughout his presidential campaign, Trump ran on a platform of repealing and replacing the ACA. In addition, since its enactment, Republicans in both the Senate and the House of Representatives have virtually all opposed the ACA, calling for its repeal.

Due to the sweeping Republican victories seen in this election, it is likely that some changes will be made to the ACA over the next four years. While it is largely unclear, at this time, what those changes will look like, Republicans in the past have suggested the following:

- Fully repealing the ACA, with or without a potential replacement health care reform legislation

- Partially repealing key provisions (such as the individual and employer mandates), while retaining some less controversial provisions
- Changing the Medicare and Medicaid programs
- Implementing new policies intended to expand coverage and lower health care costs

However, the newly elected officials will not take office until early next year. This means that there will likely be no significant legislative or regulatory changes to the ACA before then. Due to the additional uncertainty for employers, with compliance obligations hinging on the political process, employers may want to hold off on making any large-scale changes related to their employer-provided health care.

2017 Health Care Compliance Highlights

Certain changes to some ACA requirements take effect in 2017 for employers sponsoring group health plans, such as increased dollar limits. To prepare for 2017, employers should review upcoming requirements and develop a compliance strategy.

Here are some of the requirements effective in 2017. Note this list is not exhaustive and may not be applicable to you. Please contact your eESI representative with any questions regarding your health care compliance.

- **Cost-sharing Limits:** For the 2017 plan year, the annual limit on total enrollee cost-sharing for essential health benefits (EHB) is \$7,150 for self-only coverage and \$14,300 for family coverage.
- **Health Flexible Spending Account (FSA) Contributions:** The ACA limits an employee's pre-tax salary reduction contributions to a health FSA each year. The limit is increased to \$2,600 for 2017.
- **Summary of Benefits and Coverage (SBC):** A new SBC template and related materials were released for use beginning on or after April 1, 2017.
- **Reinsurance Fees:** Health insurance issuers and self-funded group health plans that provide major medical coverage must pay fees to a reinsurance program for 2014–2016. Fully insured plan sponsors do not have to pay the fee directly. Reinsurance fees do not apply for 2017 and beyond, although the 2016 reinsurance fees will be paid in 2017.

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2017 Health Care Compliance Highlights (Cont.)

- **Health Plan Affordability:** An applicable large employer's (ALE) health coverage is considered affordable if the employee's required contribution for the lowest-cost self-only coverage that provides minimum value does not exceed 9.5 percent of the employee's household income for the taxable year (adjusted to 9.69 percent for plan years beginning in 2017).
- **Section 6055 and 6056:** For the 2016 calendar year, reporting deadlines under Section 6055 and/or Section 6056 are as follows:
 - Information returns must be filed with the IRS by Feb. 28, 2017 (or March 31, 2017, if filed electronically); and
 - Written statements must be furnished to individuals by March 2, 2017. This reflects a 30-day extension of the furnishing deadline provided in Notice 2016-70.

Please contact your eESI representative for more information on this or any other compliance-related topic.

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