



eESI Steps in Helping Clients Prepare for the Upcoming New FLSA Changes

The Department of Labor (DOL) announced the new FLSA overtime rules which go into effect **December 1, 2016**. As your valued co-employer, eEmployers Solutions, Inc. (eESI) has already been proactively evaluating the impact the new ruling has on each of our employees.

eESI's HR Business Partners and Payroll Specialists have already begun contacting clients with employees with salaried employees whose income is below the new threshold, and will continue to do so through end of July 2016. Here are a few issues we'll be addressing:

- 1. Employees who are impacted by the new salary threshold (Salary Basis Test)**
A list of employees impacted will be provided to the client for review. Any exempt employee making less than \$47,476 annually must have their salary increased to the threshold limit, or be converted to Hourly/Non-Exempt basis.
- 2. Auditing exemption classifications (Duties Test)**
eESI is reviewing the exempt classifications, based on established FLSA criteria, with the affected clients. In order to be Salaried/Exempt, employees must meet certain executive, administrative or professional criteria as defined by law. You will find a more 'in depth' explanation on the next page.
- 3. Non-discretionary versus Discretionary Bonuses/Commission**
If an employee earns less than \$47,476 in base salary, there are bonus amounts that can be counted toward the Exempt threshold, but those bonuses must be 'non-discretionary.'
A review of the bonus structure will be conducted in the analysis and discussed with the affected clients.
- 4. Auditing Overtime Calculations**
eESI will partner with the client to conduct the necessary analysis. When considering whether to classify an employee as Salaried/Exempt or Hourly/Non-Exempt, employers will want to consider all hours worked.

For example, converting a salaried employee to hourly will require understanding how many hours over 40 in a week are currently being worked. The overtime hours will need to be calculated into the total pay. It may be a good idea to begin tracking hours over 40 in a week to help with making the final assessment.
- 5. Any additional items that may need to be adjusted (ex: Incorrect Departments Codes, Salaried vs Hourly pay pay structure for non-exempt employees, etc.)**

The eESI team will continue to contact our clients and schedule time to discuss the above items. Initially, we will be contacting the clients who will be impacted by the new FLSA Salary Basis Test threshold and/or audit findings in regards to exemption classification (Duties Test).



Knowing the Difference between Exempt and Nonexempt

The federal Fair Labor Standards Act (FLSA) requires employers to pay all employees at least the minimum wage for all hours worked, and, one and one-half times the employee's regular wage rate for any hours worked over 40 in a workweek. Classifying an employee as exempt, however, is more than just a matter of preference.

The FLSA has several specified exemptions, each with its own requirements that need to be satisfied in order to properly use the exemption. Classifying an employee as exempt when the requirements are not met can result in significant liability for the employer. Recently, an HR consulting firm was found to owe \$1 million in overtime wages and damages to employees after a DOL investigation discovered FLSA violations. The consulting firm misclassified employees as exempt based on the belief that employees being paid a certain salary means that the employees aren't entitled to overtime pay. The fact that an employee is paid on a salary basis is not an automatic exemption from the FLSA's overtime pay requirements.

Most of the FLSA exemptions require that an employee be paid a minimum salary and the employee must spend a certain amount of time performing specified job duties. For example, the exemption for administrative employees requires that employees be compensated on a salary basis and the salary must meet at least the minimum amount specified. In addition, employees must be primarily engaged in office or non-manual work directly related to management or general business operations, and the employees must exercise discretion and judgment with respect to matters of significance. An employer is able to classify a position as nonexempt even if the requirements for an exemption are satisfied. However, an employer may not classify a position as exempt unless all of the necessary criteria are satisfied.

Employers are encouraged to review their current exempt-level positions against the FLSA requirements for the exemption.