



Overtime Exemption Rules Are Changing (Again): Here's How You Can Prepare for Them

By Connor Doughty, Esq. and Dan Messeloff, Esq., Tucker Ellis LLP

The United States Department of Labor (DOL) is expected to update its Final Rule raising the salary threshold to qualify for the “white collar” overtime and minimum wage exemptions under the Fair Labor Standards Act. Employers should examine their pay structures for their exempt employees to ensure continued compliance with whatever the new threshold may be, to implement any reclassification measures that may be necessary, and to avoid potential legal liability. A brief overview of the law itself and past threshold adjustments can provide guidance for businesses planning for the implementation of this updated requirement.

SETTING THE STAGE

The Fair Labor Standards Act (FLSA) established, among other provisions, a minimum wage requirement and requires overtime pay for hours worked over 40 in any workweek. The FLSA, however, does not apply equally to all employees across the United States. While many employees are covered and sheltered by an array of FLSA protections, some employees are exempt from the minimum wage and overtime pay provisions.

The most common of the exemptions are the “white collar” exemptions, which are a subset of exemptions for executives, administrators, and professionals. In order to qualify for the exemption, two things must *both* be true. First, the employee’s job duties must meet certain tests, depending on whether they fall into the executive, administrator, or professional camp. Second, the employee must be paid on a salary basis at a level no lower than the threshold stated in the Final Rule. Thus, this updated salary threshold is key, for an employee who performs the proper duties but does not meet the salary threshold will not qualify for this exemption.

The DOL has raised their salary threshold multiple times over the past several decades, but to mixed results. In 2004, the DOL successfully raised the threshold from \$250 per week to \$455 per week. In 2016, the DOL unsuccessfully attempted to raise the threshold to \$913 per week, but in late 2019, the agency was able to successfully raise it to \$684 per week.

WHAT SHOULD YOU DO?

Every company’s first step should be to identify which of their employees are currently classified as exempt and then review their salaries. If an employer has an exempt worker whose salary is below the new threshold, then there are two options: either reclassify the employee to a non-exempt status or raise their compensation to at least the new threshold. In weighing these options, companies should weigh the increased costs of required salary adjustments against the employee relations and administrative impacts of reclassification.

While increasing employees’ salaries to maintain their exempt status may result in an easier administrative process, there are obvious cost considerations to take into account that come with across-the-board increased salaries.

Alternatively, reclassification could result in employee discontent and administrative hurdles. On the employee relations side, employers should not overlook the intangible, personal impact that reclassification may have. Many salaried workers see their position as a sign of prestige, and a loss of exempt status could result in a

loss of employee morale. Beyond their status, reclassification can result in many changes to their day-to-day responsibilities, such as having a set work schedule and meticulously tracking their time.

On the administrative side, the employer should consider whether it knows the precise hours that the employee currently works and what their new hourly rates will be. If not, it may consider tracking their working time to begin forecasting post-reclassification pay to account for any overtime pay that may now be required. Moreover, employers should discuss changes with their payroll department to discuss an increase in the number of employees tracking their time and having their pay switched from salaried to hourly. They should also discuss distribution of workload, scheduling, and the company's overtime policy, in order to avoid unnecessary overtime. Newly reclassified hourly employees may well have a host of payroll-related questions, such as compensable time issues, benefits and deductions, and accurate time reporting.

Although the updated salary threshold has not yet taken effect, companies should prepare for its implementation by beginning an internal review of potential affected employees now. Regardless of which route your company may take, being proactive and taking the proper steps will reduce the risk of legal liability and ensure compliance with the FLSA's overtime and minimum wage requirements.

For many of us, July marks the halfway point of summer vacation and soon preparations for returning to school will begin. Getting a vision exam is a part of that process. Healthy vision is key to a great start to school!



It's also part of an overall health. Deteriorating vision can be an early indicator of other health issues. Getting vision exams on a regular schedule helps doctors to identify issues in their early stages.

Check with your optometrist to see when you are due for a comprehensive vision exam. If you are experiencing symptoms, be sure to make an appointment as soon as possible. For more information

visit www.cdc.gov. Use #NationalVisionExamMonth to share on social media.

National Eye Exam Month was founded in 1989 by Sears Optical.



National Creamsicle Day on August 14th celebrates the creamy citrus dessert on a stick. During the height of summer, what better way to enjoy refreshment than with a creamsicle!

"Creamsicle" is the brand name of an ice cream treat. It consists of vanilla ice cream on a Popsicle stick with an outer coating of sherbert. While many other flavors now exist, the original flavor was orange.

An 11-year-old Frank Epperson inspired the creation when he invented the original popsicle back in 1905. After mixing up a powdered soda, he left the beverage overnight with the stirring stick in it. Temperatures dropped unusually low that night and the next morning, Epperson found the liquid frozen on the stick. He dubbed the creation the Epsicle. Sometime later, he changed the name to Popsicle.