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LONG ISLAND, NY - On Dec. 1, about 4.2 million workers who weren't previously eligible will become entitled to overtime pay.

The new rules will primarily affect white-collar workers with modest salaries and the companies that employ them. Affected employers have three months to figure out what strategy they will use to limit their labor costs while meeting their obligations.

Three criteria are used to determine overtime eligibility. To be exempt from overtime, workers must be paid on a salary basis, rather than hourly, and that salary must be over a certain limit. They must also pass certain duties tests to qualify as administrative, managerial or professional. Non-exempt workers must be paid time and a half for every hour worked above 40 hours per week.

With the new regulations, the minimum salary to be considered exempt is more than doubling from $455 weekly, or $23,660 on an annual basis, to $913 weekly, or $47,476 annually. This marks the first time the minimum threshold has increased since 2004. Going forward, it will be adjusted every three years.

Companies with employees earning less than $47,476 that will suddenly become eligible for overtime have several options, according to attorneys and accountants who counsel them.

Reduce overtime

Employers can reduce overtime by redistributing work, said Lois Carter Schlissel, managing attorney and head of the employment law practice at Meyer, Suozzi, English & Klein in Garden City.

"At the beginning of each week, look at what each department has to do and spread the work out more evenly, so you don't have some people working 50 hours and some working 30," Schlissel said.

Smart employers will also have a policy that requires overtime to be preapproved. However, Schlissel pointed out, "it's important to understand that if an employee violates that policy and works overtime without getting preapproval, the employee still must be paid." An employer can discipline the employee for violating the policy but it must pay him for the time worked.

Overtime can also be reduced by hiring additional workers to handle the excess work. However, companies who do this to avoid overtime must factor in the recruiting and onboarding costs involved in bringing on new employees including benefits in the case of full-time workers said Michael Greenwald, partner and corporate and business tax practice leader in the Uniondale office of accounting firm Friedman.

With the new regulations, some employers may find themselves newly in the position of having to track employee time, said Jonah Gruda, a senior tax manager in the Woodbury office of accounting firm WeiserMazars.

"They may not have the infrastructure in place, such as time-tracking software, which is another cost," he said.

When employees who never had to track their time before are told they must now punch a clock, morale can take a hit. However, it's essential that employers have an accurate, sophisticated time-keeping system.

"It's less exposure for the employer, and it's better for the workers because it ensures all their work will be counted," Schlissel said.

Increase salary

When a worker is very close to the $47,476 threshold, it may make sense to bump up his salary, Gruda said.

"For a worker who earns $45,000 and works 60 hours a week, it's going to be cheaper to bump him up to $48,000 and let him continue working the additional hours," Gruda said.

Employers must consider the potential morale issues associated with raising salaries for certain employees and not others, however.

"Other employees may say 'Joe got a $3,000 raise; why didn't I?'" Schlissel said.

For employees who work 9 to 5 every day and never or very rarely work overtime, it wouldn't make sense to boost their salary just to get them over the threshold, Schlissel noted.

Under the new regulations, up to 10 percent of the minimum threshold can be satisfied by adding nondiscretionary bonuses or incentive payments to an employee's salary, Schlissel said, noting these payments must be made quarterly or more often to qualify.

Reduce base pay to balance overtime

One option is to reclassify an employee as nonexempt and reduce her base salary to counteract the overtime pay.

"Let's say you have an employee that's paid $41,600 a year, or $800 per week more than the old threshold, but less than the new one," Schlissel said, noting this works out to $20 per hour. "Let's say the employee works 10 hours of overtime a week. If you reduce the employee's base salary from $20 per hour to $14.54 per hour and pay time and a half for the overtime $21.81 that comes out to $799.70 per week, or $41,584.40 annually."

In short, the worker is getting paid roughly the same amount for the same work. This approach has been approved by the Department of Labor, but it's not without caveats.

"First of all, if you change an employee's status to nonexempt, this may be viewed by the employee as a demotion," Schlissel said. "An employee may feel this is not fair to her, even though she's doing the same work for the same money."

"You may be killing the employee's motivation to want to do a good job," said Regina Ducati, director of human resources for Jericho-based Grassi & Co. CPAs. "And if he's unhappy, he's going to leave, and you will have to pay to find someone else and train him."

Also, overtime projections may not be reliable.

"Who knows what the future holds?" Schlissel said. "What was 10 hours in 2016 may be 30 hours in 2017."

While mulling decisions as the deadline approaches, employers should take a fresh look at their employee classifications to make sure they're accurate.

"If employees don't meet the duties test, you will have to pay them overtime even if they're over the minimum salary threshold," Schlissel said. "This is conceptually difficult for some employers to understand."

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