DOL FLSA Overtime Rule Applied to College and University Employees

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As we covered in our April blog post, DOL Announces Final Rule Increasing Minimum Salary Levels for FLSA Overtime Exemptions, the United States Department of Labor (DOL) released its final overtime rule, which increases the threshold salary levels for the "white collar" and "highly compensated employee" overtime exemptions under the Fair Labor Standards Act (FLSA).

The new rule, which takes effect on July 1, 2024, requires employees to receive a minimum weekly salary of $844 per week (or $43,888 annually) to be properly classified under the executive, administrative, or professional exemptions. Beginning on January 1, 2025, this amount will increase again to $1,128 per week (or $58,656 annually). Currently, the minimum salary threshold for these exemptions is $684 per week (or $35,568 annually).

The new rule also changes the minimum salary threshold for "highly compensated" employees from $132,964 effective July 1, 2024, and then to $151,164 beginning January 1, 2025.

With the effective date coming in less than a month, here's what college and university HR and finance offices should be doing now to come into compliance:

1 – Review the salaries of your currently exempt employees. Confirm the job duties and job descriptions of currently exempt employees. Closely review employees who earn between $35,568 and $43,888 (the July 1, 2024 salary threshold) and $56,656 (the January 1, 2025 salary threshold).

- Confirm that job descriptions are accurate and that job duties meet the "executive, administrative, or professional" exemption or some special exemptions noted below that are uniquely applicable to higher education.
- Figure out the number of employees impacted by the FLSA overtime rule change and the cost of adjusting their pay.

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Higher Education Consideration*: *Employees with primary duties of teaching, tutoring, instructing, or lecturing. This is known as the "teacher exemption" and it typically applies to full and part-time faculty and adjunct faculty. Salaries for employees with these primary duties **do not** need to meet the minimum salary threshold.

Pay close attention to the salaries of postdocs on your campus. Postdocs with primary duties in performing research (not teaching) do not qualify for this teacher exemption and will need to either be hourly employees or have salaries that meet the minimum salary threshold.

Higher Education Consideration*: *Coaches. This is known as the "coach exemption," but it only applies to coaches with a primary duty of teaching student-athletes in their sport, not coaches with a primary duty for recruitment. Salaries for coaches **do not** need to meet the minimum salary threshold.

Higher Education Consideration*: *Academic administrative employees with primary duties of "performing administrative functions directly related to academic instruction or training." Academic administrative employees are typically department heads and deans, academic counselors and advisors, and other employees with similar responsibilities. With this exemption, colleges and universities only need to ensure that their academic administrative employees receive a salary of at least the entry salary for teachers at the college and **do not** need to meet the minimum salary threshold.

2 – Determine your college's options for coming into compliance by July 1, 2024, and by January 1, 2025.

- **Option 1**: Increasing the salaries of currently exempt staff whose salaries will fall under the minimum salary thresholds as of July 1, 2024 **and** January 1, 2025 – and who are not otherwise exempt from the minimum salary requirements.
  - A salary increase ensures that these salaries remain exempt under the FLSA.
  - Room/board, tuition remission, and other benefits **do not** count towards meeting the minimum salary threshold.
  - Due to pay equity considerations or CBAs, you may also need to readjust other employees' salaries upward.
- **Option 2**: Reclassifying exempt employees whose salaries will fall under the minimum salary thresholds to non-exempt, hourly employees.
  - Remember that you need to track hours and overtime for these employees and be prepared to pay time-and-a-half for overtime. You will also need to train employees on these time keeping procedures and the boundaries of working overtime.
  - Consider which employees work in positions that are amendable to hourly work.
- **Option 3**: Restructuring your staffing so that you can increase the salaries of some salaried employees and move other employees into hourly roles.
- Consider whether you do this all at once to meet the January 1, 2025 minimum salary threshold, or do this in two steps – once ahead of the June 1, 2024 deadline and once ahead of the January 1, 2025 deadline.

3 – Be prepared for hard conversations. Depending on your college or university's financial position – and enrollment expectations – the salary increases required by the FLSA overtime rule changes may mean that while some employees experience salary increases, other employees may be let go, face reorganizations, and/or be moved to hourly wages. Be prepared for these tough conversations.

4 – Reach out to your Bowditch attorney with any questions.

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With only a couple of weeks to go before the July 1, 2024 deadline, don’t wait to start.

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