BusinessManagement DAILY

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Employees have been reclassified. Now it's time to train.

You've done your due diligence in response to the final Fair Labor Standards Act regulations that raise the weekly salary employees must earn to $684 a week (up from $455) to be considered exempt from overtime pay. That means some formerly exempt employees may now be reclassified as nonexempt if they earn between $455 and $684 per week.

Now comes the hard part: training managers in the FLSA's finer points.

Time tracking

When they were exempt, these employees weren't required to keep track of their working time. That's no longer the case. Managers must be trained—and they, in turn, must train employees—to complete timesheets every week.

Sounds easier than it is: Under the best of circumstances, it's usually difficult to get employees to submit their timesheets to you on time. Managers may meet more resistance if employees' morale dips due to the reclassification.

Working time

Likewise, when they were exempt, these employees probably just worked to get the job done without much thought about the time it took. You appreciated that. But that's also no longer the case, either.

Managers will need training to control employees' excess work hours. That may entail redistributing work or increasing staffing levels so overtime hours are unnecessary.

Managers also need to be on the lookout for these FLSA overtime traps:

- **Travel time:** The time employees spend traveling among work sites during the day is compensable working time. *Also compensable:* The morning trip from the office to the first worksite of the day and the afternoon trip back to the office from the last worksite of the day. *Not compensable:* employees' regular commuting time. *Idea:* If you eliminate the trips to the office, so employees go directly to the first work site and directly home from the last worksite, the FLSA considers them to be commuting.
- **Meal/rest breaks:** Many state laws require you to provide nonexempts with meal and rest breaks. Under the FLSA, meal breaks of at least 30 minutes, during which employees don't work, aren't compensable. Rest breaks are compensable under the FLSA.
- **Off-the-clock work:** The biggest trap here is employees who take work home with them or who answer emails, texts or work on other electronic devices after hours. *They can't do that anymore:* Managers must train these employees to ask permission to work overtime. *Be careful:* If you discover employees have worked unauthorized overtime, pay them their overtime and then have their managers dole out discipline for doing so.

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Bonus time

Paying bonuses to these employees just got a lot trickier for you, too.

FLSA rule: Nondiscretionary bonuses (e.g., merit or team-based bonuses) must be included in employees' regular rates when you figure their overtime rates. If bonuses are for the current week, add them to their other weekly earnings.

Watch out: Bonuses spanning more than one workweek must be allocated over the weeks during which they were earned.

Result: Employees' regular rates for those weeks must be recalculated and additional overtime will be due.

Exception: If you base bonuses on a percentage of employees' total straight-time pay and overtime pay, instead of a specific dollar amount, you don't have to recalculate anything. By the same token, *discretionary bonuses* may be excluded from the regular rate calculation. Bonuses are discretionary if you retain absolute control over whether they'll be paid at all and over the amount of the payment, until quite close to the end of the bonus period, and you don't make any promises beforehand to pay bonuses.

Rule would allow bonuses for fluctuating workweek employees

The U.S. Department of Labor has proposed a new rule that would encourage employers to offer bonuses or other incentive-based pay to nonexempt workers who receive salaries under the fluctuating workweek method of compensation.

The proposed rule would revise the regulation for computing overtime compensation for salaried, non-exempt employees who work hours that vary each week (i.e., a fluctuating workweek) under the Fair Labor Standards Act.

The fluctuating workweek method of compensation is complicated. It is most commonly used when employees work a variety of hours from week to week—perhaps 50 one week, 25 the next and 40 the week after that.

The FLSA regulations permit employers to pay nonexempt employees a fixed salary for such fluctuating workweeks and to compensate them for their overtime hours on a half-time basis. Under this method of compensation, an employee is paid a fixed salary covering whatever number of hours the job demands in a given week. With straight time already compensated in the salary, only one-half of the regular hourly rate must be paid for overtime.

The difficulty has always been determining the regular hourly rate of pay, a task complicated by variable pay such as bonuses.

The proposed rule clarifies that bonus and premium payments on top of fixed salaries are compatible with the fluctuating workweek method of compensation, and that supplemental payments must be included when calculating the regular rate of pay as appropriate under the FLSA.

Online resource Find a link to the proposed rule at federalregister.gov/d/2019-23860.

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