

# PREPARING FOR RADICAL CHANGES IN OVERTIME LAW



**September 26, 2016**

OKLAHOMA TRAVEL  
INDUSTRY ASSOCIATION

Charlie Plumb  
Paige Hoster Good  
McAfee & Taft  
Williams Center Tower II  
2 West Second Street, Ste. 1100  
Tulsa, OK 74103  
(918)587-0000  
[charlie.plumb@mcafeetaft.com](mailto:charlie.plumb@mcafeetaft.com)  
[paige.good@mcafeetaft.com](mailto:paige.good@mcafeetaft.com)

McAFEE & TAFT

# Introduction

- Active (and well-funded) U.S. Department of Labor Wage & Hour Division
  - More investigators
  - Evolved from information/education role to enforcement



# Introduction

- DOL initiatives
  - Independent contractor status
  - Joint employers
  - Targeted employers for 2016:
    - ✓ Hospitality
    - ✓ Construction
    - ✓ Day Care
    - ✓ Food Services
    - ✓ Oil and Gas
    - ✓ Health Care
    - ✓ Janitorial
    - ✓ Temporary Agencies  
(leased employees)
  - Changes to overtime for white collar employees



# Basics of white collar exemption

- “Exempt” – non-overtime employee
- “Non-exempt” – overtime employee
- Three main categories of exempt white collar employees
  - Executive
  - Administrative
  - Professional



# Basics of white collar exemption

- To qualify as “exempt”
  - Paid a minimum salary – now \$455/week or \$23,660/year
    - Salary not reduced based on number of hours worked or quantity/quality of work performed
  - Satisfy a duties responsibilities test



# Duties test for executive exemption

- **Primary duty** – Management of the enterprise
- **Consistently and regularly** directs the work of two or more employees
  - Authority to hire or fire (or whose recommendations are given particular weight)
    - Also: advancement and promotion decisions



# Examples of exempt executive employees

## Yes

Vice presidents

Directors

Store manager

Superintendents

Office managers

## No

Working store managers

Working foremen

# Duties test for administrative exemption

- **Primary duty** – Office work (non-manual) directly related to the management or general business operations
- Exercise of **discretion and independent judgment** on significant matters





# Examples of exempt administrative employees

## Yes

Team leaders  
Financial services employees  
Insurance claims adjusters  
HR managers  
Accounting managers  
Superintendents

## No

Loan underwriters  
Inspectors  
Examiners/graders  
Mortgage loan officers  
Factory foremen  
Real estate closers



# Duties test for professional exemption

- Work requiring advanced knowledge of science or learning
- Prolonged specialized instruction
- Exercise of discretion and judgments



# Examples of exempt professional employees

- Law
- Medicine
- Theology
- Accounting
- Engineering
- Architecture
- Pharmacy
- Teaching
- Chefs



# What is the change?

- Minimum salary level increased to \$913 per week (\$47,476 annually)
- Minimum salary level will automatically increase every three years
  - Tied to wage index
  - Announced 150 days in advance
  - First increase: January 1, 2020



# What is the change?

- Up to 10% of the salary amount may be in bonuses, provided the bonus:
  - Is non-discretionary
  - Paid at least quarterly
- “Highly-Compensated” Exemption:
  - Increases from \$100,000 to \$134,004
  - Will be increased every three years, too
- Changes go into effect December 1, 2016



# Effects of overtime change

- Millions of exempt employees will not satisfy the increased salary requirements
  - 4.2 million nationally
  - Oklahoma: 50,000
- Salaried employees will be converted to hourly employees
- “New non-exempt” employees will need to begin recording hours worked
- Monitoring/limiting hours worked by “new non-exempt” employees



# What employers should be doing now



# Breakdown

< \$23,660  
annually

- Should already be non-exempt



\$23,660 to  
\$47,476

- Increase pay
- Convert to non-exempt and pay OT



> \$47,476

- Exempt if meet duties test



# Review classifications

- Review current classifications of exempt/non-exempt employees
  - Identify existing misclassification problems
  - Use the changes in the regulations to fix existing misclassifications



# Analyze current overtime usage

- Analyze: Where am I spending money on overtime now?
- Try to gauge where exempt employees are currently working over 40 hours



# Evaluate your options

- Identify which employees will be converted from exempt to non-exempt
  - Increase salary to maintain exempt status?
  - Pay current salary and then control hours worked to limit to 40 hours?



# Develop ways to control overtime

- Make sure large assignments are given at the beginning of the week
- Redistribute work across current employees
- Consider adding new employees



# Enforce your overtime policy

- Clear written policy
  - When is overtime permitted?
  - What approval is necessary?
- Enforce consistently
- Employer still must pay overtime, but can discipline employees for policy violations



# Review current time-recording system

- Accurate and effective
- Can be used by “new non-exempt” employees



# Educate employees

- Employees will be re-classified – explain why
- Changes from salary to hourly compensation
- Changes to time-recording requirements
- What effect will the change have on hours worked by “new non-exempt” employees?

