1012 INDUSTRYREPORT

THIRD QUARTER 2016 | 1012INDUSTRYREPORT.COM

Understanding the new overtime pay regulations

KYLE FERACHI
MCGLINCHEY STAFFORD

MAGDALEN BLESSEY BICKFORD
MCGLINCHEY STAFFORD

Following the Dec. 1 effective date, employees earning less than $47,476 per year, regardless of whether they are hourly or salaried employees, must be eligible to earn overtime.

The federal Department of Labor has issued its Final Rule on regulations governing overtime pay for white collar employees, which it estimates will impact more than 43 million U.S. workers. While many in the chemical and industrial sectors may not consider their employees white collar, failing to understand this law may subject employers to lawsuits for back wages.

Before the rule goes into effect on Dec. 1, 2016, employers must assess their organizations and compliance plans regarding pay, assignment of duties, and organizational flow to ensure employee compensation complies with the Final Rule. Previous classifications that may impact their employees earning overtime pay should also be assessed.

HOW CAN AN ORGANIZATION ENSURE COMPLIANCE?

Employers should perform a wage and hour audit to ensure people are paid within the law. This includes analyzing actual duties performed by an employee to determine if he or she meets certain designated exemptions: professional, executive, administrative, computer, teaching professionals, outside salespeople and a few others. The audit will also help in converting some employees once thought to be exempt—such as pipeline workers, operators and some engineers—into non-exempt roles. Recognizing and changing classifications now will prevent headaches in the future.

This analysis is complex, and should involve legal advice in the process.

WHAT DOES THE FINAL RULE ESTABLISH?

Following the Dec. 1 effective date, employees earning less than $47,476 per year, regardless of whether they are hourly or salaried employees, must be eligible to earn overtime regardless of assignments, duties or titles.

Employers must review all employees that are paid between the former threshold of $23,660 and the new threshold of $47,476. Those who earn more than $47,476 may be exempt from overtime, provided they meet certain duties tests already established (and left unchanged to this point) by law.

The Final Rule also resets the highly compensated exemption from $100,000 to $134,004 and implements a mechanism for reassessment of these thresholds every three years. Employers will, however, be able to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the standard salary level.

WHAT ARE EMPLOYERS' OPTIONS BASED ON THIS FINAL RULE?

Essentially, employers will have to reconsider pay, compensation and duties for each employee who fits in this wage range, which could be overwhelming. There are many possible courses employers can take. For example, they could increase an employee's total compensation to $47,476 following an attorney evaluation of duties under a wage and hour audit to maintain an exemption. Management can also award employees overtime every time they work in excess of 40 hours in a pay period, move management functions to reflect pay rates, or overhaul policies regarding overtime.

Some changes may be as simple as adapting former managers to punch in and punch out, and educating these employees on attendance. Most importantly, as these changes occur, employers should be keenly aware of the importance of managing employee morale as change occurs within the organization.

Employers in Louisiana's industrial corridor should conduct audits as soon as possible. Waiting until after Dec. 1, 2016, may result in unforeseen litigation or investigations from the DOL.

Kyle A. Ferachi is the managing member of the McGlinchey Stafford Houston office and maintains a Louisiana practice as well. His primary areas of focus include labor and employment law and commercial litigation. Magdalen Blessey Bickford is of counsel in the firm's New Orleans office and represents management and employers in labor and employment litigation.