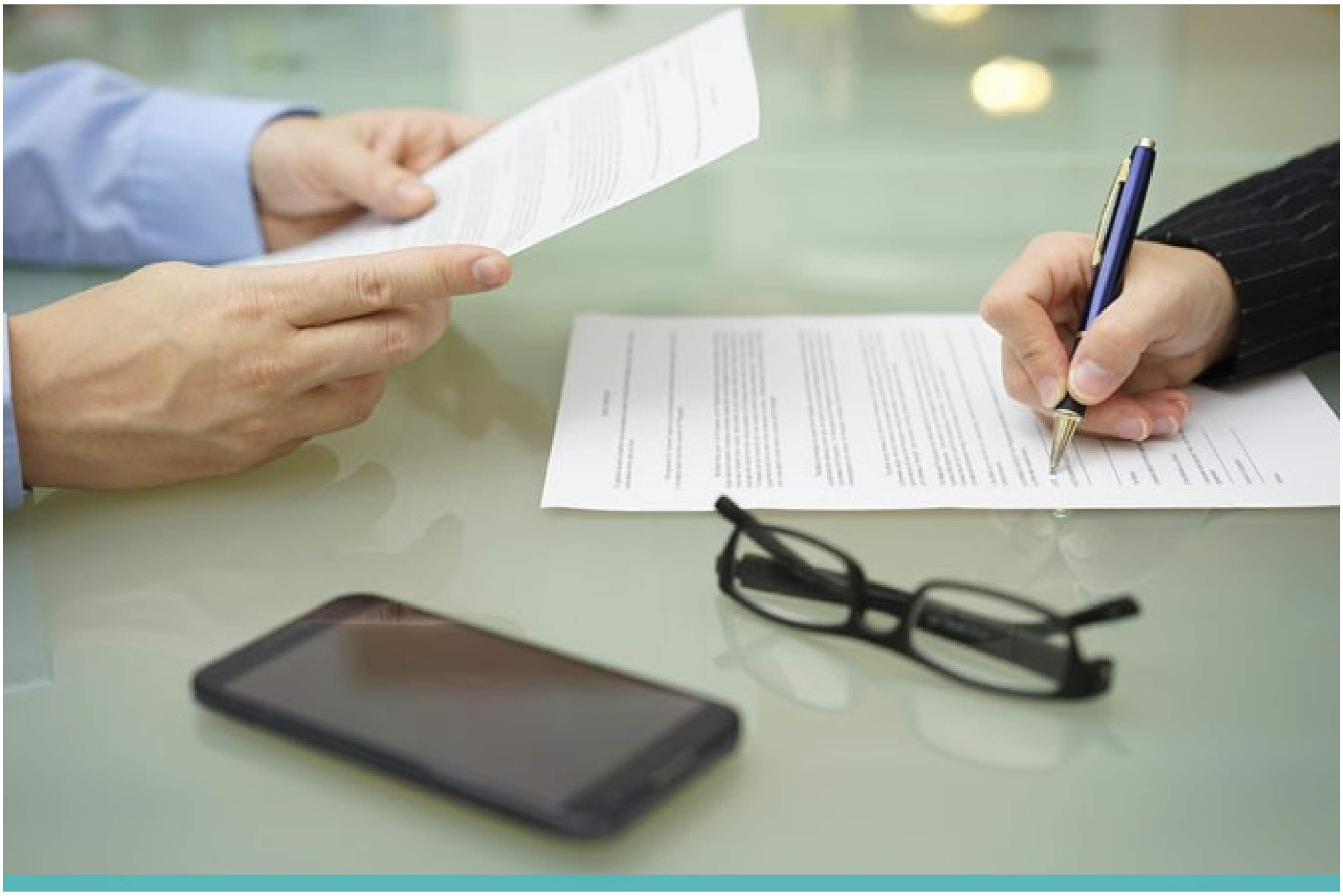
The Final Countdown: New FLSA regulations take effect December 1



Miriam L. Rosen | Wednesday, November 9, 2016

Have you ever had a song stuck in your head? The song stuck in my head lately is "The Final Countdown" by Europe, originally released in 1986.

> “It's the final countdown
> The final countdown
> The final countdown
> The final countdown
> Oh”

"Final countdown" sums it up for employers and the new FLSA regulations. Employers have only weeks left before the December 1, 2016, effective date of the new Fair Labor Standards Act (FLSA) regulations. The new regulations will raise the minimum weekly salary level for the FLSA’s white-collar exempt positions to $913, which is the equivalent of $47,476 annually.

If your organization has not already assessed the impact of these changes and developed a plan for implementing them, there is no time to waste.

It’s the final countdown and your action items must include:

Review positions currently classified as exempt from overtime pay. There are two aspects to this review: determine whether employees currently in exempt positions meet **both** the new minimum salary requirement **and** the duties test for an overtime exemption.

- **The salary test.** The new regulations require that as of December 1 an employee in a white collar exempt position (executive, administrative, and professional) must be paid at least $913 per week. **Simply put, if the weekly salary is below that level, an employer must take some action by December 1.** An employer has two options:

1. Raise employees’ pay to meet the new salary level requirement to maintain exempt status;

   or

2. Convert the employees to non-exempt status and pay the employees for overtime worked over 40 hours in a week.

   In making this decision, employers should consider a number of factors that include: the employee’s current pay, the hours regularly worked by the employee, and the employer’s ability to control or manage the hours worked.

- **The duties test.** Remember, a position classified as exempt must meet the salary **and** the duties test. Employers should use this regulatory change as an opportunity to review the classification of all exempt positions, regardless of salary level. Positions that meet the exempt status duties test are not always clear cut and changes in responsibilities and technology can muddy the waters even further. Two positions that often give employers particular trouble are inside sales and IT help desk employees – both typically non-exempt positions, but often misclassified as exempt. This is an opportunity to review and fix misclassification errors.

Ensure that timekeeping procedures are in place. Once it is determined that some employees will be reclassified as non-exempt, ensure that procedures are in place to properly track hours worked for these employees. For many newly non-exempt employees who have not tracked time worked, this will be a significant – and unpopular – change. Employers must also address such timekeeping items as travel time, lunch and break time, after-hours emailing and texting, and other compensable time issues.

Review other policies and procedures. The reclassification of employees may also impact other employment policies such as time off benefits, telecommuting, flex-time, and incentive pay policies.

Prepare employee communications. It is critical to communicate these changes to employees in a clear and direct manner so that employees understand how their pay and hours will be affected. The communication should address timekeeping procedures and other policy issues. Many newly non-exempt employees used to having workplace flexibility as exempt employees will need to understand requirements for timekeeping and getting approval for overtime work. Don’t assume that this is understood – put it in writing.

In addition, there are morale issues associated with reclassification from exempt to non-exempt status that employers must address. Employers should communicate that these changes are not the result of employee performance or a reflection of the value of the employee to the organization; rather, they are simply the result of federal regulatory changes.

Train employees. Employers must train both newly non-exempt employees as well as supervisors who will have new responsibilities for managing hours worked and compliance with timekeeping procedures. Training should not be a one time event. Getting timekeeping issues right will pay off in the long run – especially if the DOL ever pays you a visit.

It’s the final countdown…but there is still time to implement a plan for a successful transition.

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Team member bio