

As Exempt Salary Thresholds Continue to Increase, What are Best Practices for Employers Deciding to Reclassify Employees as Non-Exempt?

November 16, 2023 – Dorsey Work Watch
by Marina Lyons and Hannah Talmage

Under the federal Fair Labor Standards Act (FLSA), employees are classified as “exempt” or “non-exempt.” Employers covered under the FLSA must pay non-exempt employees at least the minimum wage for every hour they work and overtime in accordance with applicable state laws. The FLSA exempts certain job roles, including administrative, professional, executive, highly compensated, outside sales, and computer professional employees, from the overtime pay requirements. Employees in these positions are classified as “exempt.” To qualify as an exempt employee, the position must meet certain tests regarding its job duties and pay above a salary threshold, the amount of which can vary among different state laws.

Many states have their own test to determine whether an employee can be classified as exempt from overtime under state law. The state requirements are generally more difficult to meet than the federal requirement. For example, on January 1, 2023, six states, Alaska, Colorado, New York, California, Maine, and Washington increased the minimum salary requirement for an exempt position, effectively raising the bar for employers to classify some employees as exempt. More specifically, in Washington, employers must pay exempt employees \$67,724.80 per year starting in 2024, while the federal minimum salary threshold is only \$35,568.00 per year. By 2028, the Washington minimum salary threshold is expected to increase to \$92,560.00, meaning that employers will be unable to classify any Washington employees making less than \$92,560.00 as exempt.

As such, for exempt employees that do not meet the minimum salary threshold, employers will have to decide whether to raise salaries in accordance with the requirements, or to reclassify those employees as non-exempt. That decision will depend on multiple factors, including how many hours those employees are working. If they are regularly working over 40 hours per week and would be entitled to overtime if classified as non-exempt, then it may be more cost effective to keep those employees classified as exempt and raise their salaries to meet the threshold. However, for

Related People

- Marina Lyons

Related Capabilities

- Labor & Employment

employees that work less than 40 hours a week, an employer may consider reclassifying them as non-exempt, because the employer would likely not have any overtime obligations, considering the low number of hours worked by such employees.

Before choosing whether to reclassify an employee, an employer should identify the current exempt positions within the company, review those positions' job duties and salaries to determine whether they meet the FLSA and, if applicable, the state requirements for an employee to be exempt. It is good practice for an employer to conduct regular audits of these metrics, as the rules surrounding exempt workers can change. Even if an employer properly classifies an employee as exempt, state and federal laws can change – for example, the minimum salary threshold can increase – rendering a previously and properly classified employee, misclassified.

The decision to reclassify an employee from exempt to non-exempt should be done thoughtfully and carefully. In preparation of this change, the employer should notify the payroll department and identify the newly reclassified employees and the effective date of change.

In addition to alerting payroll of the effective date of change, the employer should provide affected employees an effective date. We recommend an effective date that falls on the start of a workweek and payroll cycle to minimize confusion. The period of notification and effectiveness will allow time for the employer to clearly and effectively communicate the change, the expectations, and answer employees' questions. Having some written document memorializing the reclassification is recommended (and in some states, is legally required), as it gives employees time to review the change and provides employers a way to document which employees read and understood the changes.

In addition to providing new legal rights, moving from exempt to non-exempt brings with it new responsibilities for employees. For example, employees will need to start tracking their hours worked and following the employer's policies governing how to request, track, and report overtime. Employers may want to consider requiring reclassified employees to undergo training on the newly-relevant policies and procedures. Moreover, certain requirements, such as paid sick leave or meal and rest breaks, only apply to non-exempt employees in certain states, so employees newly classified as non-exempt should also be informed of these additional benefits.

When an employee is reclassified to non-exempt, employers should expect the employee to have questions. In addition to their questions, the employer should be prepared to address any employee perceptions or feelings of demotion. To minimize this, the employer can reassure the employee that the shift to non-exempt is simply a pay categorization, not a demotion. As a non-exempt employee, the employee may work overtime hours, if approved, and with that may come the opportunity to receive more compensation. Although this is a benefit as a non-exempt worker, the employer should still be receptive to questions or concerns a newly reclassified employee might have and be able to assist.

As employers navigate reclassification, and other wage and hour issues, members of Dorsey's Labor and Employment Practice Group are here and prepared to answer those questions.