



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

For DAV Departments and Chapters

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THE NEW OVERTIME RULES

The U.S. Labor Department recently announced final regulations that dramatically expand the coverage of the overtime rules under the federal Fair Labor Standards Act (FLSA). This issue of the newsletter will be devoted to explaining the possible impact of the new rule on DAV departments and chapters. It will also provide recommendations about when it may be prudent for DAV entities to seek the advice of qualified labor counsel in their states.

When do the new rules go into effect?

The new rules go into effect on December 1, 2016. Although it is possible that a new President could cancel these regulations, most observers feel that is unlikely. It would be a politically unpopular move for a new Chief Executive to “take away” increased pay just given to millions and millions of people.

Do these rules apply to all DAV departments and chapters?

That is a difficult question. As a first point, the rule obviously has potential application only to departments/chapters that have employees. Bear in mind that merely classifying someone as an “independent contractor” does not mean that the person is not actually an employee. (See Volume 5, No. 1 of this newsletter, published in the Winter 2013

issue for a discussion and important references on this matter. Past issues of the newsletter are available at <http://www.dav.org/membership/members/>).

So, if we have employees, this rule applies to us?

Quite possibly.

In a number of states, the changes apply automatically to almost all employers. In several locations, the FLSA rules are incorporated into the substantive law of the state. Jurisdictions taking this approach include Alaska, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Missouri, New Jersey, New York, North Carolina, and Ohio. There are other states that reach the same result through judicial decisions. To ensure compliance, departments and chapters should consult local legal counsel with expertise in this area.

In the absence of an applicable state law, nonprofit organizations may escape coverage if their non-charitable income does not exceed \$500,000. However, many nonprofits (such as DAV National) are effectively covered by FLSA because all, or nearly all, of their employees participate in activities that relate in some way to “interstate commerce,” a term that is usually applied quite broadly. Questions about this should be addressed by a legal or human resources professional.



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What, exactly, do the new regulations provide?

For covered employers and employees, here is a nutshell version of the new rules:

- Salary Level Threshold:

The new regulations will raise the standard minimum level for salaried, exempt workers from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year).

The new level is pegged to the 40th percentile of weekly earnings for full-time salaried workers from the lowest wage Census Region in the country.

It is important to remember that employees can be exempt from overtime only if their jobs meet all the tests for the particular exemption claimed. Exempt employees must also receive a salary at or above the new thresholds, exercise the job duties of those categories and be paid on a salaried basis.

- Automatic Increases:

The final rule establishes a mechanism for automatically updating the salary and compensation levels every three years, with the first update to take place in 2020.

Remind me about “exempt” and “non-exempt” again, won’t you?

You should consult the Winter 2013 and Spring 2015 issues of the newsletter. In brief, under the FLSA (first enacted in 1938), employees are entitled to wages at or above the federal minimum wage and must be paid time and a half overtime for work after 40 hours in any work week. When it enacted the federal wage and hour law, Congress exempted executive, administrative, and professional employees from the overtime pay requirement. Persons in these categories are considered “exempt employees.” All others are “non-exempt” and must be paid at least the minimum wage and overtime after 40 hours worked in a week.

Can National Headquarters give me more information about our particular case?

These questions involve thorny issues of the interplay between federal and state law, as well as a meticulous analysis of the duties of individual employees and/or classes of employees. Subordinate units with significant questions need to consult a reputable employment/labor lawyer.

What happens if we make mistakes?

The law is unforgiving on wage payment mistakes. (See the Spring 2015 issue of this newsletter). So, if you need help . . . get it!

Nonprofit Advisor is prepared by the Office of the DAV’s General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.