Five steps for tackling the new US overtime ruling

By Pamela Lachaussie, payroll operations manager, ***NGA Human Resources***

In May this year, the US Department of Labor mandated that overtime pay protections would automatically be extended to cover more than four million salaried workers as of 1 December 2016. The salary threshold for eligibility will more than double to $913 per week and will henceforth be updated every three years in line with wage growth levels.

But with only months to go before the deadline, there are still nuances in the legislation and questions about whom it will affect, making the direction of travel murky and prioritisation no easy task. Yet compliance hinges on how well payroll professionals can see a pathway through the forthcoming changes. So here are five steps to help you get there:

Understand the overtime ruling

Under the Federal Labor Standards Act, the Final Rule will extend overtime pay protections to 4.2 million workers. It will:

• Implement a standard salary level set at the 40th percentile of earnings for full-time salaried workers, thus raising the eligibility threshold from $455 to $913 per week or $47,476 per year for employees working for a full 12 months

• Set the total annual compensation requirement for highly paid workers who are subject to a minimal duties test at $134,000, an annual equivalent of the 90th percentile

• Establish a mechanism for automatically updating salary and compensation levels every three years in order to maintain them at the above percentiles

• Amend the salary basis test to enable employers to provide non-discretionary bonuses and incentive payments, including commissions, that are up to 10% of the new standard salary level. ▶

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Establish what needs doing

The next step to ensure compliance with the overtime ruling is to use three assessment tests in order to determine when an employee is covered by or exempted from the legislation and under what circumstances exceptions come into play. These tests will evaluate:

- How each employee is paid (salary basis test)
- How much they earn (salary level test)
- Whether they perform the kind of duties that Congress meant to exclude from the law's overtime protections (duties test).

To be exempt, an employee must fail to conform to all of the above criteria rather than just one or two elements.

Explore your options

The overtime ruling creates a number of possible scenarios: Formerly exempt employees might need to be reclassified and eligible employees may have to refrain from working over 40 hours per week.

But before you take action, it is important to understand what options are available to you. So you could:

Increase salaries to maintain existing exemptions
Example: If an employee currently earns $45,000 per year and routinely works more than 40 hours per week, their salary could be increased to $47,476 or more per year to maintain their exemption

Pay current salaries plus overtime for more than 40 hours of work per week
Example: If an employee currently earns $35,000 annually and periodically works overtime, their employer could choose to start tracking their working hours and pay overtime whenever they work for more than 40 hours per week

Reorganise workloads, adjust schedules or spread work hours
Example: If an office manager currently earns $42,000 each year and works from 9 am–5pm each Monday to Friday, the change in salary level as specified in the Final Rule will mean they are now entitled to paid overtime. But since they never work for more than 40 hours in a given week, the change will make no difference to what they are paid.

Adjust wages
Example: An employer could agree to pay their construction project manager a fixed salary of $39,520 per year for a 45-hour working week, which would include being paid at the normal rate for the first 40 hours and overtime for hours 41 to 45. But if the situation changed, their salary would need to be adjusted to reflect the hours actually worked that week.

Take action

Before taking any concrete action, employers will have to consider how much employees currently earn, how often they work overtime, and how the organisation ensures and demonstrates compliance with the law. They will also need to evaluate their options and determine what changes it will be necessary to make.

For some businesses, it might mean completing an assessment of all exempt workers and including recommendations for achieving compliance by early October. This approach would allow sufficient time to communicate any changes to affected employees and introduce any required process and technology changes.

Other organisations might choose to focus on finding ways to validate the time worked by exempt staff members each week. Or ensure there are processes in place so that employees about to become eligible for overtime payments do actually get paid for it.

Other possibilities include introducing a new timekeeping solution, which will mean informing affected employees of the new overtime requirements and may also mean that existing technology has to be tweaked.

Whether you go for one or a combination of the above options, the most effective action should be determined by the organisation's own individual circumstances.

Use software to help

Software could prove a useful tool to help employers meet the December compliance deadline. But make sure you look for applications that:

- Produce reports of all employees who are exempt and highlight those who do not currently meet the minimum salary test to help you determine what action to take
- Provide time tracking capabilities so that affected employees can either report all of their hours worked or just their overtime.

Also try to find a vendor that takes a consultancy approach and will help you manage process and technology change. A true partner will assist in investigating and answering questions such as "what kind of technology would work best for my business?" and "what will be the most effective way to manage this change?"

Ultimately, it is about trying to gain a comprehensive picture of your organisational requirements so that when your new system is introduced, you can hit the ground running. ■

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