

Benefits BULLETIN

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Baldwin Krystyn Sherman Partners

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New Overtime Rule Goes Into Effect Dec. 1

On Dec. 1, 2016, the U.S. Department of Labor's (DOL) final rule updating white collar exemption qualification requirements will go into effect. This change is expected to affect more than 4 million workers across the United States.

The final rule increases the salary an employee must be paid in order to qualify for a white collar exemption—from \$455 per week (\$23,550 per year) to **\$913 per week (\$47,476 per year)**. The final rule also increases the salary level for the highly compensated employee exemption to \$134,004.

The required salary threshold will be updated every three years.

Implementing the new rule will be an expensive endeavor for many employers. Employers will have to review employees' exempt status, update overtime policies, notify employees of changes and adjust payroll systems. All of this could cost employers more than \$592 million, according to estimates from the DOL.

Employers must comply with the new rule by Dec. 1, 2016. A failure to adhere to the new overtime rule could result in penalties, fines, criminal charges, lawsuits and restrictions in commerce.

In order to prepare for the new rule, employers should do the following:

- Conduct an internal audit to determine which employees are affected by the salary level change, based on the new rule.
- Consider giving raises to employees who will continue to be classified as exempt but do not make the required salary.
- Make sure that non-exempt employees have processes in place for tracking hours worked.
- Pay overtime to non-exempt employees when required.
- Develop clear overtime pay policies in order to reduce payroll expenses.
- Analyze workflows to identify areas for improvement and determine if any processes can be streamlined.
- If necessary, review cost-cutting measures to make up for increased payroll expenses.
- Clearly communicate overtime policy changes and time-tracking procedures to employees in advance of Dec. 1. The earlier you start communicating, the better.

By following the steps above, you can ensure that your business is prepared for changes to the overtime rules and protect your bottom line in 2017 and beyond.

DOL Increases Penalties for Health Plan Violations

The DOL recently issued an interim final rule that increases the civil penalty amounts that may be imposed under the Employee Retirement Income Security Act (ERISA) to account for inflation.

The interim final rule increases the civil penalty amounts associated with:

- Failing to file an annual Form 5500
- Failing to provide the annual notice regarding premium assistance under the Children's Health Insurance Program (CHIP)
- Failing to provide the Summary of Benefits Coverage (SBC), as required by the Affordable Care Act (ACA)

For instance, the penalty for failing to file an annual Form 5500 with the DOL increases from \$1,100 per day to **up to \$2,063 per day** (unless a filing exemption applies).

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DOL Increases Penalties for Health Plan Violations (Cont.)

In addition, the penalty for failing to furnish plan-related information requested by the DOL increases from \$110 per day to \$147 per day under the interim final rule. For a complete list of new penalty amounts, contact Baldwin Krystyn Sherman Partners today.

The increased penalty amounts reflect an initial catch-up adjustment. The new amounts will become effective for civil penalties that are assessed after Aug. 1, 2016, for violations that occurred after Nov. 2, 2015. The DOL will continue to adjust civil penalty amounts for inflation every year, beginning in January 2017.

Major Changes Proposed to Form 5500

On July 21, 2016, federal regulators published a proposed rule that aims to modernize and improve the Form 5500 annual return/report that is filed by employee benefits plans. These proposed updates are important to employers because they focus on group health plans.

In particular, the proposed changes would **eliminate the current filing exemption for small group health plans** and require group health plans to complete a new detailed Schedule J (as well as any other applicable schedules). Currently, small welfare plans are exempt from filing Form 5500 if they have fewer than 100 covered participants at the beginning of the plan year and are unfunded, fully insured, or a combination of insured and unfunded.

The DOL, though, is proposing a new limited exemption as an alternate form of reporting for small, fully insured plans. Under this proposal, small plans would be required to only answer a limited number of questions on the Form 5500 and the new Schedule J. This limited filing would serve as an annual registration statement with basic identifying and insurance information.

Under the proposed rule, group health plans would have to complete the new Schedule J (Group Health Plan Information), which would report information about group health plan operations and ERISA compliance, in addition

to compliance with certain provisions of the ACA. For instance, Schedule J would include information on how benefits are funded, what type of group health benefits are offered and detailed claims payment data.

In addition, proposed revisions to the Form 5500 would include the following updates:

- **Financial information**—More reporting on alternative investments, hard-to-value assets and investments through collective investment vehicles;
- **Data mining**—Conversion of more elements of the Form 5500 into data or information for data-mining and analytic purposes;
- **Service provider fee information**—Updated fee and expense information for plan services providers; and
- **Compliance information**—Additional reporting on plan operations, service provider relationships and financial management of plans.

The proposed changes, if finalized, would apply to plan years beginning on or after Jan. 1, 2019. Some form changes could be made earlier, though, depending on public comments and developments in the ERISA Filing Acceptance System (currently EFAST2).

To prepare for any potential changes, employers should monitor proposed changes to the Form 5500 and consider how these changes could affect them if implemented. For instance, businesses with small group health plans that were previously exempt may want to contact service providers to assess their options for Form 5500 filings.

For more information on proposed changes, contact Baldwin Krystyn Sherman Partners today.

How the 2016 Election Could Affect Health Care

This year's presidential election could bring significant changes to the U.S. health care system. According to a recent study from Gallup, 15 percent of Americans say health care costs are their family's top financial concern—making health care a hot topic on the campaign trail.

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Hillary Clinton's and Donald Trump's platforms vary significantly when it comes to health care. For instance, Clinton wants to expand the ACA, while Trump supports repealing the ACA. Clinton supports an option that would allow people as young as 55 to buy Medicare coverage. Trump, on the other hand, does not appear to support a public option at this time.

One area in which both candidates agree, though, is about the future of the Cadillac tax. Clinton and Trump have both publicly stated their intentions to repeal the Cadillac tax if elected, so it seems likely that there may be an appeal or amendment down the road. When and in what shape such a change could come in, though, is unclear.

Like any election, how and if these platforms would be achieved once a candidate is in office remains to be seen. By being aware of each candidate's stance, you can better understand how this election could impact the health care and employee benefits industries.

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