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NEW FEDERAL OVERTIME RULES

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WEBINAR INFORMATION

- To ensure good sound quality, all attendees will be muted during the webinar.
- To ask a question: type your question in to the Question or Chat Box on your control panel. The moderator will review and present your question to the presenter at the end of the presentation as time allows.
- The NMHC/ NAA White Paper entitled “New Federal Overtime Rules and the Apartment Industry,” is available for download on the NMHC and NAA websites.
- Today’s webinar is being recorded and will also be made available on the NMHC and NAA websites.

SPEAKERS



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OVERVIEW

Today's webinar will discuss and answer the following questions:

- What are the new Federal overtime rules?
- How does this affect the apartment industry?
- What should we do?
- What are some best practices?

We will also review examples of how all this works in practice

THE NEW FEDERAL OVERTIME RULE

A new Federal overtime rule will go into effect on December 1, 2016. The new rule

- Does not change how overtime is calculated
- Does not change how overtime is earned
- Does not change how much businesses have to pay for overtime

Employees that currently earn overtime will continue to earn overtime in the exact same way and at the exact same rate as before.

THE NEW FEDERAL OVERTIME RULE

- The only real change is how much an employee must earn before they are “exempt” from earning overtime
- Before, an employee that earned less than \$23,660 per year was automatically “non-exempt,” or eligible to earn overtime under the Fair Labor Standards Act (“FLSA”). Employee that earned more than \$23,660 annually were *potentially* eligible for overtime
- By December 1, 2016, an employee that earns less than \$47,476 per year is automatically non-exempt

In other words, the new rule probably affects those employees currently earning more than \$23,660 and less than \$47,476 per year, with a possible ripple effect on other employees

THE NEW FEDERAL OVERTIME RULE

The new rule changes one of the three tests used to determine whether an employee is “exempt,” i.e., ineligible for overtime:

- Duties Test
- Salary Basis Test
- Salary Level Test

An employee is only “exempt” if he or she meets all three tests

DUTIES TEST

The “Duties” test looks at:

- What duties does an employee actually perform?
- Does the employee supervise other employees?
- Does the employee make “managerial”-type decisions?
- Does the employee exercise independent judgment?

While there is no hard and fast rule, the more judgment, discretion, and authority an employee exercises, the more likely he or she will meet the Duties test

SALARY BASIS TEST

The “Salary Basis” test looks at:

- How is the employee paid?
- Is the employee paid a set amount each week?
- Does the employee’s base pay vary based on hours worked, productivity, or commissions?

To be exempt, under relevant exemptions, an employee must be paid at least a set amount each week, i.e., a salary

SALARY LEVEL TEST

The “Salary Level” test looks at:

- How much is an employee paid?
- The value of non-monetary compensation such as free or discounted housing is excluded
- This is only test affected by the new rule.

The amount an employee must earn on an annual basis has gone up from \$23,660 to \$47,476 per year

SUMMARY OF CHANGES

The bottom line is:

- The new Rule will affect currently exempt employees earning between \$23,660 to \$47,476 per year
- Under the new Rule, more employees will be eligible for overtime because they will not earn enough to satisfy the new, higher Salary Level test
- These are most often managers at the community or site level, or possibly maintenance managers

BEST PRACTICE TIP #1

Perform a wage and hour audit on existing employee classifications:

- Make sure your exempt employees actually meet all three tests
- Make sure your exempt employees satisfy any state-specific requirements (e.g., quantitative test in California)

WHAT CAN BE DONE?

If you have employees that will be affected by the new rule, you have multiple options:

- Raise employee salaries
- Convert employee to non-exempt
- Split off employee duties to limit hours worked

PRACTICAL CONSIDERATIONS

Moving an employee from exempt to non-exempt status is more than a change from salary to hourly. You also need to consider additional wage and hour requirements for non-exempt employees, such as:

- Timekeeping
- Breaks
- Regular rate of pay
- Housing
- Off the clock work

YOU MUST RAISE SALARIES TO MAINTAIN EXEMPT STATUS

If you want to maintain an employee's exempt status, you must raise the employee's salary above \$47,476 per year

This option is best if:

- Your exempt employees perform a lot of overtime work
- Your organizational structure does not allow for splitting off duties

RECLASSIFYING IS AN OPTION

If you do not want to raise an employee's salary above \$47,476 per year, reclassifying is an option.

- Your exempt employees that do not meet the higher Salary Level test will become non-exempt and earn overtime
- This option is practical if the employees do not work much, if any, overtime

SPLIT OFF EMPLOYEE DUTIES TO AVOID OVERTIME

If you do not want to raise an employee's salary above \$47,476 per year, but the employee performs a lot of overtime work, you could reclassify as non-exempt and split off some of the employee's duties:

- Redistribute job duties to other employees to minimize the amount of overtime any one employee works
- The employee will still become non-exempt, but you will be taking steps to reduce any overtime worked

BEST PRACTICE TIP #2

Take a close look at the job situation before making a decision

- Some employees may not actually work much “overtime” now
- Some employees might be better not clocking in and out
- Some job situations will require an exempt employee
- Consider ripple effect upstream

PRACTICAL EXAMPLE #1

- 50 unit community
- Exempt community manager currently earning \$35,000
- Supervises two other employees
- Manager is provided an on-site apartment, rent free
- Also serves as after-hours contact for residents

PRACTICAL EXAMPLE #2

- Exempt maintenance manager currently earning \$35,000
- Supervises four maintenance supervisors based at separate communities
- Manager travels between the communities

QUESTIONS?



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THANK YOU

For more information about the NMHC/NAA Joint Legislative Program, click **'Advocacy'** on either the NMHC or NAA websites.

www.nmhc.org

www.naahq.org