



FOLEY & FOLEY ^{PC}
ATTORNEYS AT LAW



General Counsel Employment Law Report

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The DOL Final Rule On Overtime is Finally Here

A long time ago in an Administration far far away, the Department of Labor (DOL) proposed a rule that would raise the salary threshold for employees to qualify for overtime under the Fair Labor Standards Act (FLSA). A kerfuffle ensued. The rule stalled. The proposed rule changed. At long last, **the final rule** has been published. Here is what you need to know:

- The “standard salary level” from the currently enforced level of \$455 per week (enacted in 2004) moves to \$684 per week (equivalent to \$35,568 per year for a full-year worker);
- The total annual compensation requirement for “highly compensated employees” increases from the currently enforced level of \$100,000 per year to \$107,432 per year;
- Employers can use non-discretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, in recognition of evolving pay practices;
- This rule will make an estimated 1.3 million more workers eligible for overtime; and
- The rule is effective as of January 1, 2020.

Nobody is happy—it is too low, too high, too much too fast—and lawsuits delaying the implementation are expected. As we have done since the rule change was announced in 2015, we will keep you updated. We know you await news on this with bated breath.

It is never too late to take a look at whether your exempt positions are properly classified, and a very worthwhile exercise in light of the penalties associated with misclassification. That is precisely why we prepared our **Exempt or Non-Exempt Classification Service**. While this rule would change the compensation test, in our experience, most misclassifications fail based upon an assessment of the duties test. We stand ready to help.

Pregnancy: It is Not that Complicated.

Our clients are smart– but we all need a reminder **Pregnancy discrimination** has been on the books at the federal level since 1978. That law is the floor, not the ceiling. Many states and municipalities have enacted higher standards over the years, addressing lactation and parenting leave.

In spite of decades of law and centuries of pregnancy and work, businesses still get tripped up. UPS just **agreed to pay \$2.5 million** to settle pregnant worker claims. Why tho?

If you or your business:

- Has ever provided light duty to an employee with a work-comp claim;
- Has ever provided light duty to an employee as an ADA reasonable accommodation; and/or
- Has ever provided time off to an employee as an ADA reasonable accommodation?

Yep. Then you must do the same for pregnant workers.

Thank you for coming to my TED Talk.

Questions? We can help.

Less Than 100 Days before Christmas– I Mean DOL Final Overtime Rule

96 Days To Achieve Compliance With The New Overtime Rules? No Worries, Help Is Here.

Why all the hype:

- The long-awaited and much-debated “White Collar” regulations issued on September 24, 2019, become effective January 1, 2020 – your compliance deadline.
- Our blog post outlining the rule details can be found [here](#).
- This change drives home the importance of exempt and nonexempt job classifications under federal and state law.
- The risk is not limited to the FLSA. Each state has its own unique employment laws. Some of these laws are consistent with the FLSA, others are not. State agencies and Attorney Generals’ Offices also conduct audits and initiate lawsuits, compounding the risk to employers.
- The law presumes all workers are nonexempt, hourly. **The burden of proof is on the employer to show an exempt employee fits in to a recognized exemption.**
- Two tests: compensation and duties. Compensation straightforward but not conclusive. The duties test is where employers get tripped up—we have worked with clients for years on this and have developed easy to use tools.
- The new overtime regulations have given every employer the perfect opportunity to not only reclassify positions impacted by the new salary levels, but to correct positions that were improperly classified as exempt from the start. Our [Position Classification Service](#) is an efficient use of your time and resources.

Do I need a lawyer? Of course, but here is why:

- In the event of a lawsuit, internal audits of exempt/non-exempt classifications can be used as evidence of a willful violation of the FLSA, which lengthens the statute of limitations from two to three years. The strongest protection is the careful use of the attorney-client privilege to protect the audit itself. Engaging human resources staff or consultants or even in-house counsel to conduct the audit will not allow the company to avail itself of the attorney-client

- privilege. **By retaining outside counsel to perform this service, all findings are protected by Attorney-Client privilege.**
- This is an exceptional chance to obtain an indemnified legal opinion that all the jobs in your workplace are accurately classified as exempt or non-exempt, under both state and federal law.

We Get It!

- That is why we developed our **fixed fee Position Classification Service.**
- Getting started is very easy.
- We provide your team the forms, checklists and worksheets that will carefully guide you through the classification process.
- We will review the forms, checklists and documents that you provide us to insure exempt positions comply with state and federal law.
- **You can relax knowing that you have well-written job descriptions and that each employee is correctly classified and being compensated under the pertinent state and federal laws. And then you can begin your holiday shopping.**

Closing Thoughts

The United States Department of Labor has been moving forward on the issue of classifications in the workforce for some time now. Our fixed fee service gives you peace of mind. You will be prepared for the important DOL rule change in a cost certain, easy to use way.

Please contact us for assistance or questions any time. We can help. 508.548.4848
or mike@foleylawpractice.com

Super Short, Super Informative: Immigration News

As you may know we have a great immigration lawyer, **Cassie Ramos**. She has launched a **monthly newsletter** as an easy, quick way to keep employers updated on workplace immigration issues. Being able to hire and retain qualified workers from outside the US is often a struggle. H-1B, H-4 EAD, I-9, F-1—it can be as confusing as it sounds.

If you have questions after reading the Immigration Newsletter, feel free to **contact Cassie**. She can help.



General Counsel's Office Hours Special Member Benefit



All CCHRA members in good standing will have the special benefit of being able to call Attorney Michael E. Foley, in his role as the CCHRA General Counsel, to obtain his guidance on employment law compliance issues and corresponding HR-related risk management during his CCHRA GC Office Hours – **at no cost**.

[Click here](#) for the description of the role of the CCHRA General Counsel. As General Counsel, Mike will be available within his virtual and gratis office hours for all CCHRA members from 2 pm to 3 pm on the first and third Tuesday of each month. The guidance Mike provides during his office hours will cover all issues that arise within the broad spectrum of the employment relationship to help CCHRA members achieve compliance with the extensive regulations that govern their workplace and to better understand best employment practices.

Issues related to the Internal Revenue Code/the Internal Revenue Service or ERISA-related issues will not be covered under this arrangement, nor will the interpretation, editing or drafting of documents. The office hours will be limited to providing guidance on employment law questions and corresponding HR-related risk management that can be answered in one telephone conversation. Mike can be reached during his CCHRA General Counsel Office Hours at 508-548-4888.

Mike Foley has been representing employers, small and large, for-profit and not-for-profit within all industry sectors and in all matters of labor and employment law for over 30 years. He draws on the breadth of his experience to offer employers an uncommon approach and practical solutions. [Click here](#) for Mike's bio.