

In Re: RIN 1235-AA20

I am writing in opposition to the proposed change to increase the total annual compensation requirement for "highly compensated employees" (HCE) from the currently-enforced level of \$100,000 to \$147,414 per year.

I also have comments regarding the timing of implementing the changes, how they can negatively impact take-home pay, and how the Department of Labor should standardize the payroll cycles for any employee whose status will change from exempt to non-exempt by any of the new regulations.

### **Raising Highly Compensated Employee (HCE) Rate Is Unnecessary Regulation**

The goal of modifying any overtime regulations should be to focus on those workers at the lower end of the income scales, to bring people who are working long, hard hours out of poverty.

Employees should be able to decide when they are highly compensated, not the Department of Labor or other divisions of the government. The true-definition "Highly Compensated" varies greatly across the country and this proposed regulation ignores this important fact. For those that live and work in some of our major cities with a high cost of living, \$100,000 might not be considered "highly compensated". However, there are many areas of this country where \$100,000 provides a comfortable level of living. For those that chose to live in locations that have a low cost of living, the existing thresholds are enough and do not need to be adjusted. Arbitrarily picking a nationwide 90th percentile of wage earners is misplaced and penalizes workers who are high wage earners but chose to live in areas that offer a low cost of living.

Moreover, the Department's statement that some 201,100 exempt workers who earn at least \$100,000 but less than \$147,414 per year, and who meet the HCE duties test but not the standard duties test, would somehow gain overtime eligibility is false and misplaced. For those at the lower end of the HCE threshold, say at exactly \$100,000 today. This would amount to a 47.4% raise, which for many occupations is not supported by the marketplace. Employers are not going to suddenly raise salaries or pay overtime at this high of a compensation rate. Most employers will alter the work schedules, reduce job duties and responsibilities, reduce workplace flexibility and increase regulatory burden of these formerly HCE employees.

The HCE regulation already decreases productivity in the workplace, it can and will diminish the career path of scores of occupations. This is already occurring at the \$100,000 salary level. Raising it 47.4% will only make the issue worse. My advice is, leave it alone.

Another major issue not being considered is that many employees that are salaried do not have to have the burden of clocking in and out each day, they don't have to maintain exact time sheets. When the government takes a whole class of exempt workers and makes them non-exempt, this increases the paperwork and regulatory burdens that companies face, and individual employees must endure, as most companies are suddenly scared about being liable for overtime. Most companies will not pay overtime, especially at the \$100,000 HCE rate, and so there is an overall economic pressure to ensure these employees don't work a minute over 40 hours a week. Instead of focusing on the job or task at hand,

now a significant portion of these jobs is spent on tracking time. This is inefficient and an unnecessary burden on employers and employees.

Overall, the Overtime regulations should focus on bringing people out of poverty and let employees who are highly compensated handle themselves. If they feel they are being taken advantage of by their employer, they can ask for a raise, or they can find other opportunities. Better yet, move to an area that is more affordable. Raising the HCE rate is not helpful to these individuals, it's a nuisance.

### **Consider Pay Cycles When Implementing Changes:**

#### **Standardize Payroll Cycles When Changing Employees From Exempt to Non-Exempt**

When companies switch employees from salary to hourly for tracking and controlling overtime, this can create a sudden and unannounced decrease in take home pay for no good purpose. Many salaried employees are paid on a monthly or bi-monthly basis. Most companies pay hourly employees on a weekly or bi-weekly basis. For example, if switching from bi-monthly to bi-weekly, this divides the salary from 24 to 26 payments throughout the year and results in smaller paychecks. Not only is this less efficient from a time tracking and payroll basis, but many workers set their bill and payment cycles around their paychecks. Suddenly, they have less money to pay the bills until there is a month with three payments if paid bi-weekly, or five payments if paid weekly. The problem is, some employers use the first Friday of the month to start the bi-weekly cycle, and some use the second. Getting this right nationwide for every individual and every employee is likely impossible to do without additional regulation.

We read so much about families living paycheck to paycheck, and when you are thinking of updating the rules, you are inadvertently taking money away from many individuals who will never see a minute of overtime under the new regulations and producing smaller paychecks. The Department of Labor should really look at this very carefully and limit the changes. I'm not a huge fan of adding additional regulation in these areas – but my advice would be if you are going to make any changes, standardize the payroll cycles of all employees to ensure that no employee is short changed due to these rule changes. If the rule is subject to be implemented in January 2020, there should be regulating the weekly or bi-weekly payment schedule should be paid on or before Friday, January 3, 2020 to ensure that all workers will be paid 5 (weekly) or 3 (bi-weekly) paychecks within that month. If the regulations are postponed or delayed, then they should be delayed until May 1, 2020 and the pay cycles for weekly and bi-weekly employees should be normalized to Friday 5/1/2020 to ensure nobody has a short pay month due to the regulations. If there are further delays, any month with three Fridays should be selected, and the first Friday should be regulated as the pay date to ensure weekly and bi-weekly paid employees are not left short in those months.

Any way you slice it, this gets messy quickly, which is why I am personally not a fan of the government interfering with matters between employers and employees. Changing the overtime rules does not increase the amount of overtime that is paid to most employees.

Respectfully Submitted,

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