Effectively Leading an FLSA Reclassification Project

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Agenda

- Quick summary of the FLSA
- Regulation and timeline update
- Case study context
- Selecting a project team
- Identifying key stakeholders
- Ensuring communication success
- Final thoughts and questions
FAIR LABOR STANDARDS ACT

Summary
What is the Fair Labor Standards Act?

**Answer:** FLSA establishes minimum wage, overtime pay, recordkeeping, and child labor standards

- **Affects full- and part-time workers in the private sector, and in Federal, State, and local governments**
- Federal statute passed in 1938
- Created to prevent workers from being required to work long hours without extra compensation
- Enforced by the U.S. Department of Labor
What is the Fair Labor Standards Act?

There have been recent changes to the law, particularly the overtime and recordkeeping provisions

- Some employees are exempt, others are non-exempt from overtime pay provisions
- Exemptions are narrowly defined under FLSA
- Recordkeeping requirements for exempt employees are different than for non-exempt employees
Who is Exempt from Overtime?

**Based on:** The type and frequency of performed duties and responsibilities

**Not solely based on:** How often or how much the person is paid, or the preference of the supervisor

**Exempt status** under the FLSA include classifications generally described as:

- Executive
- Administrative
- Professional (learned and creative)
- Computer
- Outside Sales
Exempt Guideline Examples

3 Tests to Qualify for Each Type of Exemption
(including but not limited to an evaluation of)

Salary Basis
Pre-determined fixed salary

Salary Level
New level of $47,476 annual

Duties Test
Executive, Administrative, Professional, Outside Sales, Certain Computer

11C-7
Exempt Position Examples

**Executive**: President, SVP of HR, Executive Director

**Professional**: Professor, Physician, Pharmacist, Engineer

**Administrative**: Marketing Manager, Trainer, Accountant

**Computer**: Systems Analysts, Programmer, Software Developer

**Outside Sales**: Door-to-Door Salesman
Non-Exempt Jobs

Jobs classified as non-exempt are entitled to overtime pay

- Jobs that are typically non-exempt include:
  - Manual laborers and skilled-trade workers
  - Customer service representatives
  - Receptionists
  - Stagehands
  - Administrative support positions
REGULATION & TIMELINE UPDATE

Summary
FLSA Regulation Update

On May 18, 2016 the U.S. Department of Labor released its final rulings revising the Fair Labor Standards Act (FLSA) overtime regulations…

For employees who qualify for overtime pay by working more than 40 hours in a given week, the updated rule more than doubles the salary level.
FLSA Regulation Update

On May 18, 2016 the U.S. Department of Labor released its final rulings revising the Fair Labor Standards Act (FLSA) overtime regulations...

$47,476
The previous threshold of $455 per week/$23,660 annually has been increased to $913 per week/$47,476

$134,004
The salary threshold for qualifying as an exempt "highly compensated employee" will raise from $100,000 to $134,004
FLSA Regulation Update

Every three years, adjustments will be made to maintain:

1. The standard salary level at the 40th percentile of full-time salaried workers in the lowest-wage Census region

2. The HCE total annual compensation level at the 90th percentile of full-time salaried workers national
FLSA Timeline Update

Effective date for these changes:

December 1, 2016
What Counts as Salary?

A portion of bonus payments can count towards the standard salary level

- Up to 10% / $4,747 annually of standard salary level can come from non-discretionary bonuses, incentive payments, and commissions
- Must be paid at least quarterly or more frequently; annual bonuses do not count towards the standard salary level
- Bonuses cannot be discretionary

Car allowances, per-deims, room & board, and other reimbursements do not count towards the standard salary level
Your Options as an Employer

1. Raise the salary for positions that qualify for exempt/salary status based on the duties test to $47,476 annually/$913 weekly

2. Reclassify positions that meet the duties test but not the new exempt/salary threshold to non-exempt/hourly, track their time and pay them overtime

3. Reclassify positions that meet the duties test but not the new exempt/salary threshold to non-exempt/hourly, reduce their hourly equivalent rate to offset the addition of overtime pay

4. Restructure the positions, transition some full-time positions to part-time, reduce normal "work hours," eliminate positions and/or change operational processes
CASE STUDY

Setting the Context
EmCorp Profile

- Privately-owned company in the Midwest
- Prominent brand and community presence
- About 1,000 employees
- Professional services orientation
- Cost/budget conscious
- Compensation low to market, but a lot of perks and generous benefits
- Very involved Board of Directors
EmCorp Employee Profile

- Many long-tenured employees (30+ years)
- 38-hour standard work week; culture does not encourage or expect significant overtime
- Employees often volunteer for company client events outside of normal work hours
EmCorp New Leader Profile

- New CEO
- Strong, credible experience with strategic vision for Human Resources function
- Confident leader that is not afraid to push back on Board or other key stakeholders
EmCorp Human Resources Profile

HR reports to the CFO

HR historically compliance-focused and serving as an administrative function, not strategic leader

Brand new HR leader at start of this project, new to the organization but experience in HR outside of the industry
EmCorp Project Profile

1. After serving as interim Compensation Director for 4 months, I was asked to lead a FLSA reclassification project as a contractor/consultant

2. HR tried to initiate this project many times over the past 15 years, but key stakeholders and timid leadership always prevented it from moving forward

3. Project lasted 18 months

4. This project was over 2 years ago, so we didn’t have the “changes in the law” as our reason for changes
EmCorp Project Profile

1. Hundreds of employees were affected and moved from exempt/salaried to non-exempt/hourly

2. Many jobs that were incorrectly classified had incumbents in them that had 30+ years in that same position; they never tracked their time

3. The organization historically rewarded employees with titles and created a culture that closely tied being paid on a salaried basis to being seen as a “professional”
SELECTING A PROJECT TEAM

It’s not just about who sits at the table...
Functions that Need to Be Involved

- Top/Chief Executive
- Human Resources
  - Top leader
  - Compensation
  - Payroll
  - Employee relations
  - HR Business Partners
  - Other specialty functions
- IT/HRIS
- Legal
- Corporate Communications
- Finance
- Others
Executive Leadership is Key

Be clear—as a group—who is the true “owner” and executive sponsor of this project

- Keep them informed and involved
- Be transparent about challenges
- Defer to them if there are disagreements
- Be clear that person will be the face and signature of most communications
Case Study Learning Moment

You need a single project manager and a single executive sponsor
IDENTIFYING KEY STAKEHOLDERS

You probably didn’t think of everything…
Human Resources

• Who is the executive sponsor and project manager?

• What information is needed to conduct an audit/analysis of FLSA status?

• What policies and procedures needs to be reviewed and updated?

• What information needs to be shared with the team about past learnings in this area?

• What roadblocks exist and who needs to know?

• What will the FAQs be, and who will own building them along the way?
Payroll

- What is the best time to make the change?
  - Is pay schedule changing (e.g. monthly to bi-weekly)
  - Will there be gaps in wages paid due to transition?
- Should you consider paying salaried non-exempt?
- How much time do they need to prepare for changes?
- Do they need additional resources?
- What system outliers or customizations need special attention?
HRIS and IT

• How much time do they need?
• Do they need additional resources?
• Who is going to manage creating new logins and accounts in the timekeeping system?
• What system outliers or customizations need special attention?
  • How are part-time employees in system?
  • Will hourly rates change?
  • Has FLSA status been tracked effectively in system?
Supervisors and Management

- Are job descriptions up to date?
- Are there people with the same title doing meaningfully different work?
- Who is a “working supervisor” that does more of the work he/she is supervising and less actual supervising?
- How will this affect scheduling and overtime?
- What unique work situations need to be addressed in the FAQs?
Training Department

- Who is going to train people on the new timekeeping system?
- Who is going to train supervisors on how to review and approve time?
- Who is going to hold people accountable for this?
- Who is going to struggle most with this transition and how do we help?
- Do we need training in multiple languages?
Trusted Employee Group

- If there will be variations in pay:
  - Do I need to change my mortgage deduction schedule?
  - Could benefits deductions now be timed poorly?
  - Can I have time to save a bit to manage the financial impact of changes?
- What lifestyle impacts may occur?
- What are we not thinking of?
Engage the Trusted Employee Group early in the process so you can truly leverage their insights.
Case Study Learning Moment

You need the project manager to create a project plan and be clear about accountabilities, timeline and deliverables—this is not just an HR initiative
COMMUNICATION
Crafting and delivering your message
Create a Communication Plan

This is parallel to the overall project plan

- Include:
  - Timeline
  - Objective
  - Key message
  - Communication roles
  - Audience
  - Deliverer/signature of message
Cascade Your Communication

- **Inform** department leaders before, during and after each phase of the project
- **Educate** leaders so they are in a position to own the communication for their department and become a champion for the changes
- **Partner** with leaders so the communication cascades from the top through the ranks of management so the employee hears a personalized message from his/her direct supervisor
- **Deliver** a communication package to leaders so they are prepared to be successful
Meet 1:1 with Employees if Possible

- Prepare supervisors to communicate:
  - Why you are making these changes
  - How this will affect the individual, team and company
  - What policies and procedures will change
  - Work hours and overtime expectations
- Share FAQs document as a leave-behind
- Be direct and empathetic
- Allow and encourage follow-up conversations
Important Factors to Consider

• Don't underestimate the individual emotions involved in moving employees from exempt/salary to non-exempt/hourly

• Consider the impact on your workplace culture

• Be careful with your language so you don’t marginalize hourly work
Case Study Learning Moment

How your company communicates these changes is as important—probably more important—than the change itself.
POLICIES & PROCEDURES

Review and revise for relevancy
Time Policies

You may have to redefine your work day and work week:

- Work Hours
- Flex-Time
- Emails & Working from Home
Timekeeping

Rules & Systems

• How is time recorded?
• Who tracks work hours now?
• How many hours are salaried workers actually working now?
• Who will train employees and supervisors on the new system?
• Who will hold them accountable for submitting in a timely manner?
• What is process and consequence for unreported time or missing time reports?
Travel Policy

1. What travel hours are compensable time under FLSA?
2. What is your current policy?
3. How might it change?

DOL Fact Sheet: [www.dol.gov/whd/regs/compliance/whdfs22.htm](www.dol.gov/whd/regs/compliance/whdfs22.htm)
Benefit Programs

Review your benefit and retirement plans

• Some benefits may define eligibility by exemption status; revisit to ensure the classifications still make sense (e.g. paid time-off program)

• Some benefits may be a multiple of “salary” and may need to be revisited or clarified

• The cost associated with these benefits may change; calculate and plan for the impact
Other Compensation Programs & Policies

- Paid Time Off
- On-Call Pay
Case Study Learning Moment

It’s about more than how and when they get paid, it’s about proving that you were thoughtful about this and paid attention to the day to day reality of the impact of this change—you remembered they are humans and not numbers.
CASE STUDY KEY LEARNINGS
Case Study Key Learnings

• Have a strong, consistent leader and project manager from start to finish
• Build a strong cross-functional project team that commits to a project plan and assigned accountabilities
• Leverage a trusted employee group in a meaningful way
• How your company communicates these changes is as important—probably more important—than the change itself
  • Save time, energy, and resources for the communications phase of the project
  • Update all policies and procedures that are affected by the change
  • Personalize and cascade communication
  • Invest in the extra time for a meaningful set of FAQs
• Be human
QUESTIONS?