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PREPARING FOR THE FLSA OVERTIME RULE CHANGE



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Why Are We Here?



December 1, 2016



FLSA Facts

Just The Facts

FLSA = Fair Labor Standards Act

- Federal law; sets minimum wage and overtime
- Must pay overtime for hours worked over 40 per week unless classified as “exempt”
- To be exempt, job must meet three tests:
 - Salary level
 - Salary basis
 - Duties

Salary Basis Test

\$913 / week

\$47,476 / year

Highly Compensated Employees

\$134,004 / year

Bonuses (May) Count



10%



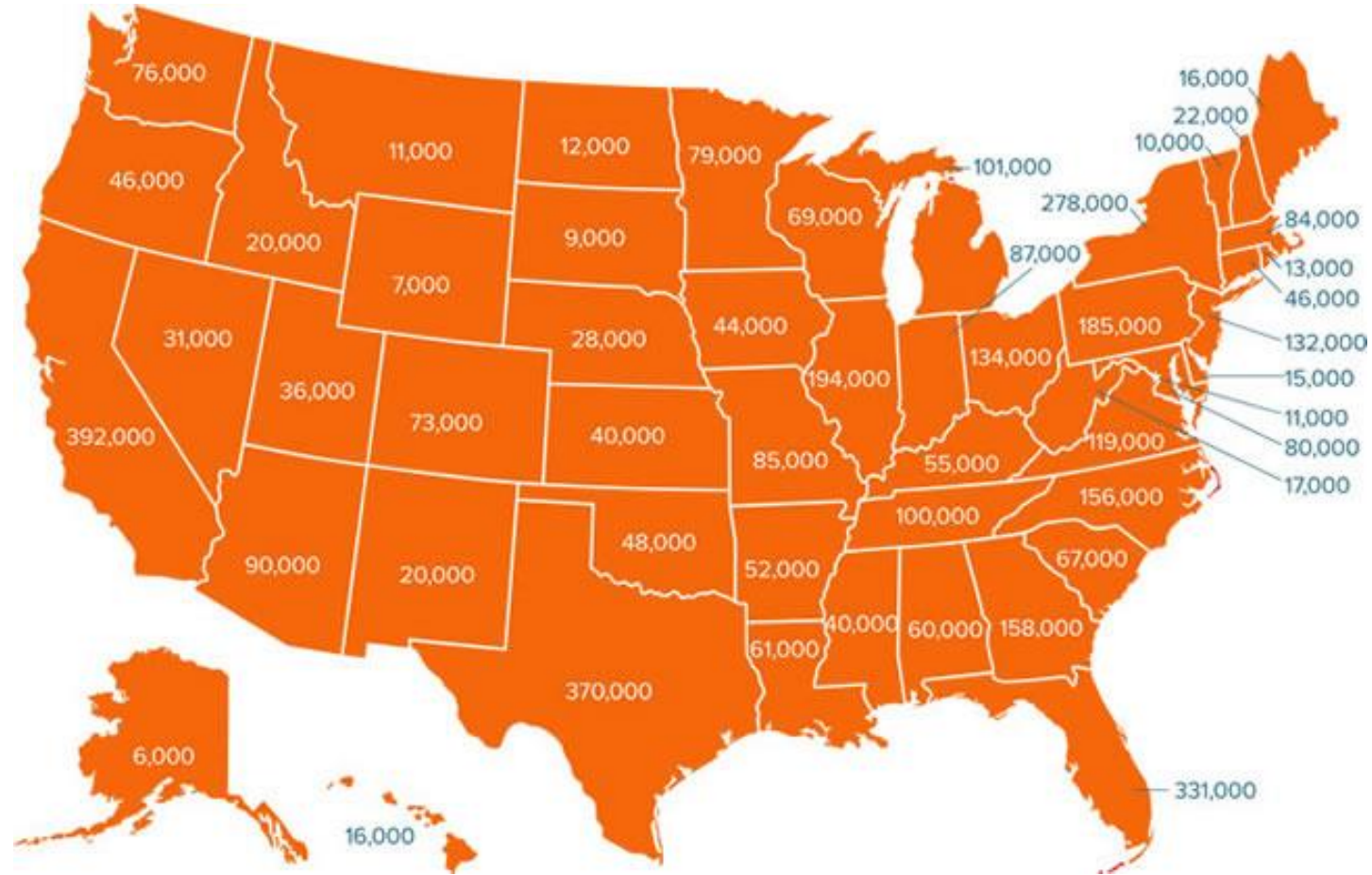
Duties Tests: NO CHANGE

Duties Tests For Exemption

- Executive
- Administrative
- Learned Professional
- Creative Professional

Who's Covered?

Overall



Enterprise Coverage

FLSA Enterprise coverage applies if:

- Engage in commercial activities with annual sales or business of \$500,000 or more
- Two or more employees engage in commerce or in the production of goods for commerce
- Does not include income (donations, memberships, etc.) used for charitable activities

Automatically Included

Organizations automatically included:

- Hospitals
- Preschools
- Residential care facilities
- Higher education institutions
- Schools for mentally/physically disabled or gifted
- Elementary or secondary schools
- Federal, state or local government agencies

Individual Coverage

Individual (Employee) Coverage

- Work activities determine coverage
- Coverage applies on a workweek basis
- Covered if engage in interstate commerce
 - Make/receive out-of-state phone calls
 - Send/receive out-of-state mail/email/faxes
 - Order or receive goods from out-of-state suppliers
 - Make credit card transactions or bookkeeping for these

Automatically Excluded

Salary basis and salary level do not apply:

- Doctors
- Lawyers
- Teachers
- Outside Sales

Impact on Nonprofits

Impact On Nonprofits

- 50% jobs in local salary survey average < \$47,476
- Education, housing, social services most affected
- Up to 20, 30, or even 40 hours of overtime/week



Impact On Nonprofits

- Good for staff; earning more supports the mission
- Seasonal jobs – plan for more staff/less overtime?
- Increase staff to reduce overtime – benefit cost?
- Pay compression for coordinators and managers?



How To Prepare

Who's Exempt?

- ✓ Make a list of your currently exempt jobs
- ✓ When was the last job description review?
- ✓ Have the job duties changed?
- ✓ Last legal review of FLSA classification?

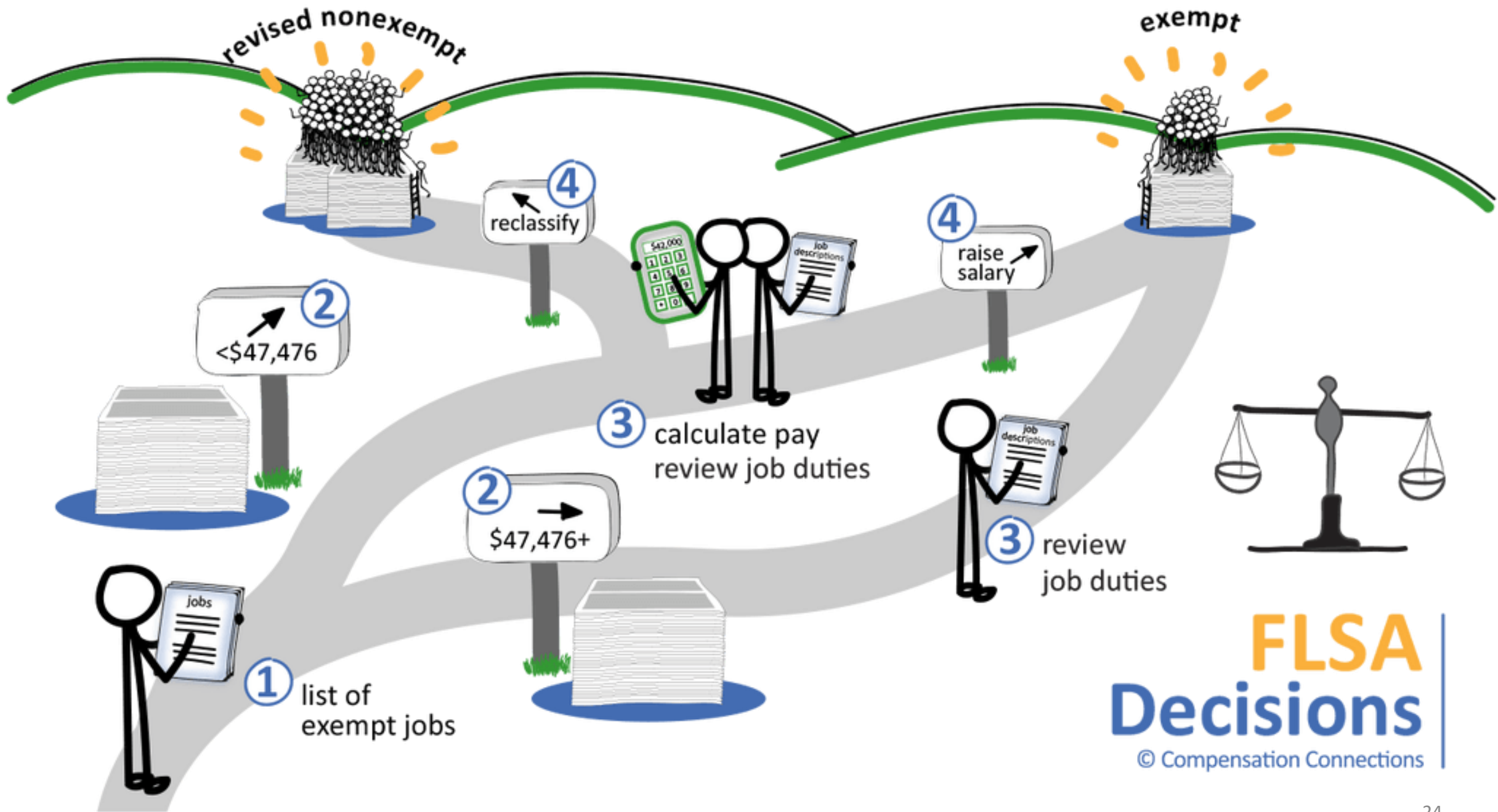
About Those Job Descriptions

- ✓ Do they manage other employees?
- ✓ People managers – change in job duties?
- ✓ People managers – how many direct reports?
- ✓ Revise job descriptions that need it

About That List

Jobs Paid Less Than \$47,000 / Year:

- ✓ Employees work more than 40 hours per week?
- ✓ How much more, and how often?
- ✓ What would be the cost of overtime?
- ✓ Who will work those hours if they don't?
- ✓ Decrease the amount of overtime? How?



Formula For Calculations

Calculate For Each Employee:

1. $\text{Salary} + \text{bonus} / 52 \text{ weeks per year} = \text{weekly pay}$
2. $\text{Weekly pay} / \text{total hours} = \text{regular rate (approx.)}$
3. $\text{Regular rate} \times 2,080 + \text{Regular rate} \times 1.5 \times \text{OT hours per week} \times 52 \text{ weeks} =$

Employee Annual Pay If Non-Exempt

What If You Had A Calculator?



ADP has a overtime cost calculator:
<http://www.adp.com/flsa-calculator/index.html#individual-calculator>

Example Pay Calculations

Final Rule Calculator	Example 1	Example 2	Example 3
Annual Salary	\$38,000	\$40,000	\$42,000
Weekly OT Hours	5	5	3
Weekly Total Hours	45	45	43
Annual Pay	\$38,000	\$40,000	\$42,000
Annual Pay with OT	\$45,125	\$47,500	\$46,725
Estimated Cost of Compliance	Example 1	Example 2	Example 3
Increase Salary	\$9,476	\$7,476	\$5,476
Reclassify and Pay Overtime	\$7,125	\$7,500	\$4,725
Cost Difference	\$2,351	(\$24)	\$751
% Pay Increase	19.96%	15.75%	11.53%

More Decisions

- ✓ Convert reclassified employees to hourly?
- ✓ How will reclassified employees track hours?
- ✓ How to manage overtime hours worked by newly reclassified employees?
- ✓ Can you/how should you control overtime hours?
- ✓ Hire more people? Which jobs/when/# of hours?
- ✓ What policies should be added or revised?

Run The Numbers

- ✓ Calculate cost for each employee on your list
- ✓ Reclassify jobs that need it
- ✓ Cost to hire additional people?
- ✓ Recheck your list: all employees/jobs included
- ✓ Calculate salary budget increase

Ready, Set, GO

- ✓ Develop your communication plan
- ✓ Choose your start date
- ✓ Get executive buy-in
- ✓ Meet with managers / answer questions
- ✓ Listen to feedback and revise
- ✓ Meet with employees / answer questions

Quick Reference List

1. Start now!
2. Make a list of the affected jobs
3. Complete necessary revisions to job duties
4. Legal review of job duties
5. Complete calculations for all employees in revised jobs
6. Determine number and cost of new hires
7. Assess the impact on the salary budget
8. Develop a communication strategy
9. Tell everyone
10. Deal with questions/concerns of managers and employees

Need Help?

- Need help reviewing job descriptions? What about communicating changes to staff? Email hrconsults@501commons.org with questions
- Look for latest updates and resources <http://www.501commons.org/overtime-rules>
- Resources include workbook to help you do the math, review duties, and the checklists we just discussed

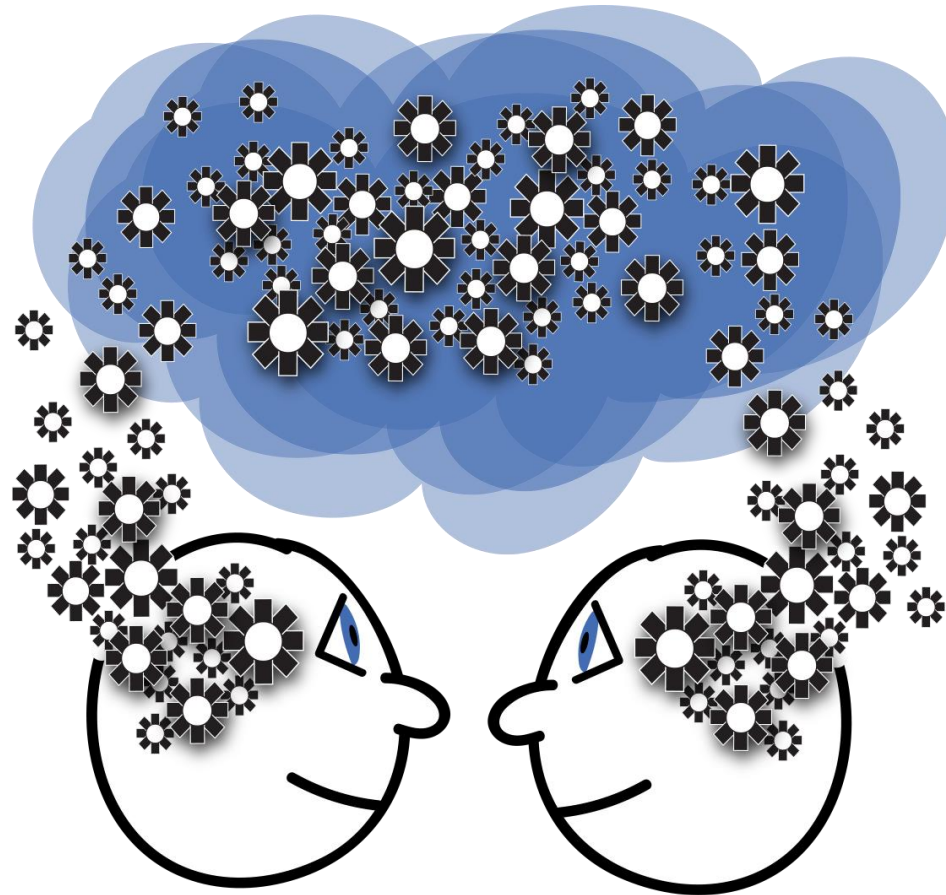
Previous Questions

- Our administrative person orders office supplies online. Is that considered interstate commerce?
- We have counselors who staff a domestic violence hotline. We take everyone who calls. How will we know if they are engaging in interstate commerce?
- We have employees who work part time, and are paid less than \$47,476. Will they be non-exempt?

Previous Questions

- If we re-classify someone as salaried, non-exempt, can we provide comp time instead of overtime pay?
- Can non exempt employees be paid a salary if they are paid OT for working over 40 hours per week?
- If a person works 40 hrs. M-F but works an event over the weekend, should the weekend time be paid as OT? Or can they take the next day off as comp time?

Your Questions?



QUESTIONS? COMMENTS?

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