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HOSPITALITY LAW

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Proposed DOL rule could have significant impact on staffing

Drastic changes proposed by the U.S. Department of Labor could have devastating effects on the way hotels and restaurants treat managers and other salaried employees. The DOL issued a notice of proposed rulemaking in June, calling for a steep increase in the minimum salary threshold for exempt employees under the Fair Labor Standards Act.

The proposed rule would increase the current exempt salary from a minimum of $23,660 to more than $50,000 per year, tying the rate to the 40th percentile of weekly earnings for full-time salaried employees according to the consumer price index. The change also proposes to raise the annual compensation requirement for highly compensated employees to the 90th percentile of CPI annual earnings, which would be more than $122,000. If the proposed rule becomes law, the result for hospitality employers is that many assistant manager and managers will either have to be paid upwards of $50,000 per year to remain exempt employees under the FLSA, or be classified as non-exempt and paid a lower wage plus overtime.

Michael Weber, partner and co-chair of the hospitality practice group of Littler Mendelson, said the while raising the salary rates may sound good to the DOL and pro-labor groups in theory, he sees a lot of negative "unintended consequences" such as staff reductions, reduced overtime, and significantly modified work schedules that could negatively impact staff.

"You can't simply impose these types of financial obligations on employers and assume that they're going to be able to absorb the costs — it's not realistic," he said.

Papa John's Pizza franchise owner Scott Gardiner commented on the proposed rule, noting that his general managers at his two franchise locations are salaried at $600 per week. Under the proposed changes, he will be forced to either pay his GMs overtime or increase their salary by 50 percent. With the profit margins of just 1 to 3 percent at his stores, he said he will have to reduce the GM's responsibilities, hours, and salary and hire a co-manager to avoid closing his locations.

"I do not think that my general managers would be punished with a salary reduction because there is no exemption in [the] proposed changes," he wrote.

Law could have wide impact

According to the U.S. Department of Labor, as many as 4.6 million employees currently classified as exempt may be moved to non-exempt status under the change in the law, and will then be entitled to overtime pay. ■

Weber noted that chains and fast casual restaurants are likely to be the hardest hit if the changes take effect as proposed. He said many of his hospitality clients pay their managers and assistant managers between $23,000 and $50,000, and that the proposed changes will likely have a greater impact on restaurants and hotels than just about any other industry.

"Employers are going to have to reduce overtime and potentially reduce manager levels — they can't absorb that kind of additional cost without responding," he said. "You can't all of a sudden have 20 hours of overtime you didn't budget for. It will probably have an adverse effect on the workforce, and it's possible that consumers may find challenges to service because of these limitations."

While the DOL is still accepting comments until September on the proposed changes, Weber advises hospitality employers to start thinking about compliance now. First, he suggests updating systems to ensure that no one is working off the clock or performing any unauthorized side work. He said employers should have in place a system to require employees to acknowledge, in writing, on a daily or weekly basis that they are being paid for all hours worked, and that overtime is carefully monitored. With tighter budgets likely if the law is passed as proposed, he said restaurants may want to consider in investing in better technology to better estimate staff requirements based on reservations.

He also suggests that employers review current exempt positions to ensure that they truly are exempt under the FLSA — meeting the salary threshold isn't the only determining factor — and calculate the number of overtime hours these exempt employers regularly work to help decide the best strategy to take if the proposed rule becomes law. ■