This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Nonprofit Staffing Strategies for New Overtime Regulations

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On June 30, 2015, the United States Department of Labor proposed raising the minimum salary required for the "white collar" overtime exemptions (executive, administrative, and professional) from $455 per week ($23,600 per year) to $921 per week ($47,892 per year), with automatic annual upward adjustments. The DOL further proposed raising the salary threshold for the "highly compensated" exemption from $100,000 to $122,148, adjusted annually. These regulations are likely to be adopted later this year.

If these regulations take effect, many employees who are currently classified as salaried exempt will no longer pass the salary test. This change will affect millions of employees who earn more than $23,600 but less than $47,892 per year. The new regulations will significantly impact the nonprofit world, where salaries in the $25,000-$45,000 range are common. Nonprofits should start planning now to meet the upcoming budgetary challenges.

1. Raises for certain high-level exempt employees. If an exempt employee who works more than 40 hours per week already earns around $45,000, an easy fix is to raise her salary to the new annual minimum. The salary increase can be offset by a decreased bonus, so that the employee still earns roughly the same amount. She will remain free from timekeeping requirements, and will collect the same salary each week, regardless of hours worked.

2. Salaried employees who no longer meet the salary test for exemption must keep track of their time. Newly non-exempt salaried employees will be required to record their hours worked. They may punch time clocks, fill out time sheets, use a computer program, or any other method that accurately tracks hours worked. While this may initially seem inconvenient or awkward, recording hours is essential to protect against overtime claims.

3. Formerly salaried employees may be paid an hourly rate. Employers may convert some formerly salaried exempt employees to hourly timekeepers. They will earn an hourly rate for up to 40 hours each week, and time- and-a-half for hours worked over 40. To manage labor costs, employees should be required to obtain prior approval for overtime hours. If a job consistently requires more than 40 hours per week, the duties can be split between two part-time hourly employees. Fifty or sixty hours divided between two people is far less costly than 10 to 20 hours of weekly overtime.

4. Overtime for salaried non-exempt employees. Going forward, many formerly salaried exempt employees may be converted to salaried non-exempt. If the job can be performed in a 40-hour week, the salaried non-exempt employee will continue to receive the same salary and will not work overtime (as proven by time records). If overtime is needed on occasion, the employee's salary will cover the first 40 hours, and the employee will be paid time-and-a-half for overtime hours.

A second option for salaried non-exempt employees whose hours vary from week to week is a "flexible work week" schedule. Employees who work FWW receive the same base salary each week, whether they work 30, 40, 50, or more hours. Their hourly rate, however, varies each week depending on the number of hours worked. Their salary covers straight time pay for all hours. If they work more than 40 hours, they receive another half times their hourly rate as overtime compensation. For example, an employee earning $400 per week who worked 40 hours would receive $10 per hour straight time. If she worked 50 hours, she would receive $8 per hour straight time. She would also earn an additional $4 per hour for 10 hours of overtime, for a total of $440. If this same employee were paid time-and-a-half after 40 hours, she would be due $150 in overtime, for a total of $550. The disadvantage of the FWW method is that it requires that an employee's hourly rate be calculated every week she works overtime, and can be inconvenient to administer.

5. Limits on "compensatory time". Private employers (including nonprofits) are not permitted to avoid paying overtime by "banking" hours for time off in a subsequent pay period. There are two limited exceptions to the rule against "compensatory time." First, employees who take time off in the same workweek will avoid overtime. If an employee has already worked 40 hours by Thursday, she may be given Friday off. This is the easiest way to prevent overtime costs—simply ask employees who have worked 40 hours to go home for the week.

One other option is a "time off" plan where an employee who works overtime hours in the first week of a pay period may take time off the next week (calculated at time and a half), so that her total compensation does not change. For example, an employee who earns $10 per hour and works 5 overtime hours in week one of the pay period would be entitled to $75 in overtime compensation. If she is given 7.5 hours off in week two (1.5 times 5 hours), she would still earn $800 for the two week pay period ($475 plus $325).

6. Use of volunteers. Finally, a nonprofit may use volunteers (subject to the FLSA's requirements) to augment its paid workforce. The nonprofit's employees may also provide volunteer services, so long as they are truly voluntary, are provided outside the employee's normal work hours, and are different from the employee's regular duties. It is not permissible for employees to "volunteer" overtime hours in order to finish their regular work.

Nonprofits affected by the new overtime rules can stretch their labor budgets by increasing salaries for exempt staff to the new minimum, hiring part-time hourly workers, utilizing a FWW compensation plan, and, where appropriate, using volunteers.

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