



HRxaminer

*Examining practical HR issues business owners
and managers encounter every day*

FLSA Changes Effective December 1 – Are You Ready?



Most employers will be affected by the December 1st change in the Fair Labor Standards Act - when all employees earning less than \$47,476 per year (\$913 per week) must be designated as non-exempt. There are a lot of nuances for companies in making any required changes from both a strategic and an economic perspective. Here is one of the questions a client posed to me:

Question: By December 1st we'll have one employee who will be changing from exempt to non-exempt. Would this newly non-exempt employee then need to start using an hourly time sheet like other currently non-exempt staff use? Or could they just work 40 hours a week and stay at their current salary and we pay them overtime if they work any? Would it appear discriminatory if one employee didn't complete time sheets while the other non-exempt staff do?

Answer: My recommendation is to treat the newly non-exempt employee the same way you treat your other non-exempt employees and have the person complete a non-exempt timesheet. Non-

exempt employees are required to track their hours – when they start in the morning, when they break for lunch and when they stop working at the end of the day. This should be consistent for all non-exempt employees.

Whether it's legally discriminatory depends on the protected classifications of all the employees involved. Could it impact morale if your other non-exempts are required to track their time formally and consistently and one employee is not? That's another question.

My personal/professional position on the matter is that I don't recommend having salaried non-exempt employees. On one hand, if they only work 35 hours in one week, you're still paying them for 40. On the other hand, if they work 42 hours in a week, you're still required to pay overtime. There's no benefit in this method for the company and some employees may take advantage of this situation, which could be costly to the organization.

One of the concerns that HR people are raising regarding the FLSA change relates to how exempt employees are accustomed to working nights/weekends, answering texts and emails during off-hours...basically behaving like an exempt employee. Once they switch to non-exempt status all of this extra work must stop – otherwise, they are required to include it on their timesheet as hours worked. This behavior will likely put them into overtime on a regular basis, which most companies want to avoid. By keeping the employee as a salaried non-exempt employee, this normal exempt behavior is likely to continue and could cause problems.

So since you're required to make this change by law, you can blame the law for having to convert the employee to non-exempt employee status. Then you can handle all your employees consistently. Be sure to have the conversation with the employee regarding prohibited off-hours work – AND – have that same conversation with the manager and others if they have come to expect a response from the employee during those off-hours.

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About Arlene Vernon

Arlene has provided HR consulting and management training services to over 500 organizations since starting HRx, Inc. in 1992.

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