

Overtime rules change may affect 5 million workers

By Holly Culhane, Contributing Columnist



President Obama is proposing an overtime rule change that could potentially raise the wages of 5 million American workers. It also has triggered a political battle, with U.S. businesses in the crossfire.

The impact of the proposed rule will be felt less in California, where state laws already have imposed greater requirements on employers to pay workers overtime.

We're advising our clients that now is the time for them to audit their payroll and confirm that workers who have been classified as "exempt managers" are truly exempt from being paid

overtime.

The proposed rule, which the president unveiled earlier this month, will raise the pay threshold of workers eligible to receive overtime pay when they work more than 40 hours in a given week. The threshold, which was last raised by the President George W. Bush administration in the mid-2000s, is now set at an annual \$23,660. President Obama is proposing to raise the threshold to \$50,440.

In other words, at a federal level, companies can now argue that workers who make more than \$23,660 and perform certain types of independent functions – still below the poverty level for a family of four – qualify as salaried and are not eligible to receive overtime pay for their work above 40 hours a week. President Obama proposes to raise that cutoff to \$50,440.

President Obama further proposes to build in an automatic increase in the overtime rule, linking it to the 40th percentile of income.

The federal overtime rule has its roots in the Great Depression and in the Fair Labor Standards Act, which Congress passed in 1938. The act gives presidents broad authority to set workplace rules without seeking the approval of Congress.

Raising the overtime threshold addresses the Obama administration's frustration over wages stagnating in recent years, despite the nation's recovery from the Great Recession.

But expanding the category of workers qualifying for overtime will not guarantee pay increases. Employers could cut workers' hours by hiring additional employees. Some employers could make minor adjustments to pay and simply raise workers above the overtime threshold if their

duties would still qualify them for exempt status. Business and industry representatives contend the proposed rule will increase costs and lead to job cuts.

In addition to raising the overtime threshold, federal labor officials are examining the criteria, or “duties test,” used to determine when a worker is really an hourly employee vs. exempt from overtime.

The federal Labor Department will publish the proposed rule in the Federal Register. This begins a 60-day period, during which proponents and opponents can submit comments at www.regulations.gov. The administration will consider the comments before a final rule is adopted, which is expected to happen in 2016.

The retail and service industries, where low-wage workers commonly are found, are expected to be hardest hit by the proposed overtime rule. The National Retail Federation predicts overtime costs for businesses will climb \$9.5 billion.

While a future president could theoretically roll back the overtime rule, the impact on middle class wages would be significant and cause political repercussions.

Our advice is for employers to use the coming months, while the rule is being adopted and possibly challenged in the courts, to prepare for change. Likely the proposal will undergo some modification, but we expect the overtime threshold to be lifted and greater scrutiny given to workers who are classified as managers. With that in mind, it's important to ask:

--Are managers truly managers, or should they be paid hourly wages and compensated for overtime? Audit payroll, particularly salaried positions. Make sure you are paying people properly under the current rules.

--Can work schedules and procedures be changed to eliminate the need for employees to work more than 40 hours a week? Determine if overtime should be restricted.

--Will hiring additional employees help avoid paying overtime to employees who are now exempt, but may not be considered exempt, if these regulations are implemented?

Change is coming. This is a good time to carefully consider how your company should manage it.

This article written by Holly Culhane first appeared online and in The Bakersfield Californian on Tuesday, July 15, 2015. Holly Culhane is president of the Bakersfield-based human resources consulting firm P.A.S. Associates. She can be contacted through her website www.pasassociates.com and through the [PAS Facebook](#) page or by phone at 631-2165.

P•A•S Associates has expertise in human resources and other areas involving employment issues. P•A•S Associates, in providing this website, does not represent that it is acting as an attorney or that it is giving any form of legal advice or legal opinion. P•A•S Associates recommends that before making any decision pertaining to human resource issues or employment issues, including the utilization of information contained on this website, the advice of legal counsel to determine the legal ramifications of the use of any such information be obtained.