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DISCUSSION

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MEET THE EXPERTS



JOE SCHEPPE

Joe Scheppe is a 28-year veteran of the payroll and HR outsourcing business. During that time he has mastered the ability to help companies improve efficiency by incorporating technology with outsourced services. His vision to help companies effectively manage their ever-increasing employer responsibilities, along with his passion for providing personal, responsive service led Scheppe to co-found Integrated Payroll Services in 2005.

With Scheppe as president, IPS has grown from a two-man partnership to a firm with over 30 employees. IPS outperforms its competition by maintaining a relentless focus on service, technology and value. As a graduate of Saint Louis University with a finance degree, Scheppe began his professional career in the payroll and HR service industry with Automatic Data Processing. He spent 17 years with ADP, quickly rising through the ranks to major accounts area sales executive.



BRIAN PEZZA

Brian Pezza, a member of Lewis Rice LLC, spends most of his time working to keep employers in compliance and out of trouble. He focuses his legal practice on counseling employers on a variety of employment law issues, including medical leave scenarios, collective bargaining agreements, affirmative action, management and HR personnel training, and employment litigation.

Over the past 15 years, Pezza has represented a diverse range of employers including Fortune 20 companies, startups, family-owned businesses and municipal entities. Pezza tries cases in state and federal courts, and represents employers in a variety of administrative investigations and government audits.



BETHANY HOLLIDAY

Bethany Holliday has been with The Cornerstone Insurance Group for the past seven years as the director of their TotalHR division. In this role, she works with Cornerstone clients to provide HR consulting, including regulatory compliance, policy and procedure development, employee recruitment assistance, employee and supervisor training, performance improvement and development, disciplinary procedures, FLSA review, FMLA guidance and routine day-to-day employee relation concerns.

Holliday has over 17 years of HR experience and was the area HR manager for an international manufacturing firm prior to joining Cornerstone. Her background includes both corporate human resources and labor relations, including contract negotiations. She holds a B.A. in organizational management, and is also certified through Human Resource Certification Institute and Society for Human Resource Management as a Human Resource Professional (PHR) and a SHRM Certified Professional (SHRM-CP).



MEET THE EXPERTS

PHOTOS BY BETHANY HOLLIDAY

Fair Labor Standards Act discussion

▶ LET'S START WITH A BRIEF OVERVIEW OF FLSA

Brian Pezza: The FLSA, or Fair Labor Standards Act, is a federal law that's been around for nearly 80 years. It requires that employers pay both a minimum wage and time and a half for overtime, which means hours over 40 in any work week, to all employees who are not exempt from those requirements. What we're going to talk about today is not a change in the law but a change in the regulations interpreting the law, specifically as it deals with who is eligible for overtime and who is not. Generally, there are three tests to satisfy an exemption to be free from the requirement of being paid overtime. The first is the employee must be paid on a salary basis. This means they are paid one agreed-upon rate for all work done in a week that's not subject to reduction based on the quality of work or how much work they do. That's the salary basis test. The second test is the salary level test. This salary must be paid at a certain floor or above for most employees. There are some who do not have to be paid on a salary basis or level – lawyers and doctors, for instance – but most do. And the third is the duties test. This is where we get the concept of white-collar exemptions, which are people who fit certain defined duties of administrators, professionals or executives. "Executives" is just another word really for supervisors. And that, up until recently, has been the focus of much FLSA litigation: whether or not someone fits one of these duties tests. Thankfully, the duties tests haven't been changed since 2004, and they're not going to be changed in this regulation. Everything we're going to focus on effective Dec. 1 is that second test, the salary level test, which has been increased substantially from \$23,660 to \$47,476 per year.

Joe Schweppe: As Brian said, FLSA became law to require employers to compensate employees with at least the federal minimum wage, and to pay time and a half for hours worked greater than 40. The final rule specifically focuses on the executive, administrative and professional, which is referred to as the white-collar exemption. Those classified as executive,

administrative or professional that were considered salaried or exempt, will now face a significant increase in the required salary – from \$455 a week, to \$913 a week, or \$47,476. In addition, the highly compensated threshold has changed. Previously, the U.S. Department of Labor has been very lenient on highly comped people, and generally only requires them to meet one of the duties tests that Brian mentioned, if they make at least \$100,000 per year. The final rule increases the highly compensated threshold to \$134,004 per year. Keep in mind, employees are not automatically considered exempt if they're highly comped. Certainly, they never were supposed to be. But that's a big jump. And that hasn't been changed since 2004.



The U.S. Department of Labor has been very lenient on highly comped people, and generally only requiring them to meet one of the stress tests if they make at least \$100,000.

JOE SCHWEPPE,
IPS

▶ ARE THERE WAYS EMPLOYERS CAN PROTECT THEMSELVES FROM OVERTIME OR UNFORESEEN COSTS GIVEN THE NEW REGULATIONS?

Bethany Holliday: There are quite a few ways they can do it. One of them is utilizing a job description that not a lot of employers currently do, which is a salaried non-exempt employee. This is a classification where employees are earning an annual salary. It makes it convenient for both the employer and the employee, because we know that they're going to be making fill-in-the-blank dollars a year. But if they don't necessarily meet the duties test that Brian mentioned, they are actually eligible for overtime. Classifying these employees as salaried nonexempt tells us that they're going to earn this annual salary and allows employers to limit any sort of fluctuating hours. The other thing employers can do is write an overtime policy that states employees need permission prior to working any overtime. If employers go this route, they need to be sure to treat that policy just like any other policy, whether it's a dress code or attendance policy. That way, if an employee is consistently working overtime without approval from management, the employer can discipline them or write them up to have a record of it.

Brian Pezza: Of course, they have to pay their employees, even if they violate the rule by working overtime. Employers have to make sure they pay for the hours worked. Notably, if it happens early in the week, say an employee works a 10-hour day on Monday, you can tell them to take off two hours early on Friday and avoid paying overtime. Everything needs to be determined within a seven-day work week.

Bethany Holliday: You want to have boundaries or parameters on when employees are going to be working and how much they're going to be working. If there is an employee who is constantly asking for overtime – or just working it without the approval – then you may have some other performance issues.

Joe Schweppe: Controlling overtime costs is a focus for most business, regardless of the new regulation. Employers with an electronic means to collect and track time worked have the ability to be electronically alerted when employees are approaching overtime before it's too late. This provides management with the ability to assign hours to other associates who are not near the 40-hour threshold. Of course employers with unions may have other rules to consider regarding who is given the opportunity for additional hours. Regardless, in my experience, it's far better to provide managers with the tools to proactively manage overtime, especially when an organization has a policy to limit overtime, as Bethany mentioned.

▶ JOE, SINCE YOUR CUSTOMERS USE YOUR SERVICE TO COLLECT TIME WORKED AND PROCESS PAYROLL, WHAT ARE MOST OF THEM DOING WITH THE POSITIONS THAT WERE CONSIDERED EXEMPT BUT NOW ARE NOT?

Joe Schweppe: Thus far, we are seeing most employers converting the employees who meet the exempt duties test, but are not earning the minimum \$913 per week to salaried nonexempt from salaried exempt. The employee still earns the same amount as they did in the form of guaranteed hours, but they would be paid time and a half for any hours worked greater than 40 in a seven-day work week. The Department of Labor allows for employers with fixed schedules, which seldom vary, to assign the repeatable schedule to the employee, and ask the employee to advise when they deviate from the schedule, so the employer can properly pay overtime if applicable. This concept helps employers who are struggling with previously exempt employees who now have to "punch a clock." It is recommended to have the employee submit a timesheet, approving the hours they worked, which gives them the ability to define hours they worked in addition to their normal schedule.

Brian Pezza: One challenge for employ-

ers is when employees feel the pressure not to record time that they actually worked. They may feel that they should have been more efficient or it may be subtle or not so subtle pressure from their direct supervisors who expect them to get their work done in the 40 hours. They know they get paid for the time if they put it down, but they think that it may reflect on them in a negative way. That's going to be a real challenge for management on a day-to-day basis. You can have the tools in place, but if employees choose not to use them, then you're in a bind. Because like I said earlier, the employers have to pay nonexempt employees for all hours worked. Once they permit the work to be done, whether they are actually aware of it or not, if they allow the work to happen, they have to pay for it.



▶ IF SOMEONE'S SALARY IS NOT QUITE AT THE MINIMUM BUT THEY HAVE COMMISSIONS OR BONUSES THAT BRING THEM TO THE NEW SALARY MINIMUM, ARE THEY EXEMPT?

Bethany Holliday: It depends on how often those commissions or bonuses are paid out. With the new FLSA guidelines, commissions and bonuses can be incorporated into that minimum threshold, but they have to be paid on a quarterly or more frequent basis. If a company traditionally gives out a bonus at the end of the year, whether it's a holiday bonus or a, "Hey, we did really awesome this year" bonus, then that particular bonus wouldn't necessarily meet the exemption requirements. Employers need to be looking at it on at least an every three-month basis and it must be non-discretionary.

Brian Pezza: This is one area where the Department of Labor threw the management side a bone because there was no opportunity for including any kind of commissions when this rule was originally proposed last summer. But, it's only limited to 10 percent of the salary level. So you still have to pay \$821 in a guaranteed salary per

week. And only that last 10 percent can be made up by non-discretionary bonuses or commissions. So it helps, but you still have to be paying this person nearly \$43,000 a year in salary if you have any hope of maintaining the exemption.

Joe Schweppe: Non-discretionary bonuses and commissions can be used to make up 10 percent of the \$47,776 annual salary but must be paid at least quarterly. In other words, the minimum quarterly salary for an exempt administrative, executive or professional employee would be \$47,476.00 divided by four quarters, which equals \$11,869 per quarter. The Department of Labor is allowing 10 percent of that to be made up in discretionary bonuses and commissions. In other words, the employer would pay a minimum quarterly salary totaling \$10,682.10, which leaves \$1,186.90 to be paid in bonus or commission. Keep in mind the true calculation is based on per work week, which requires \$913 per work week and that is \$47,476 annually.

Private suits can be brought where you're paying double damages plus attorney's fees to the employee.

BRIAN PEZZA,
Lewis Rice

▶ AND THERE IS A CATCH-UP PERIOD?

Bethany Holliday: You do have the opportunity to put in a catch-up period. If you have an employee who didn't meet their commission requirements, for example, and therefore would fall below the threshold for that particular quarter, you can give them the difference to push them above in order to maintain the exemption. But this can be tricky because you're basically in debt to them, or they're in a debt to you because you paid them in advance of what they earned.

▶ IS THERE A MAD RUSH TO GET AHEAD OF THIS BEFORE THE DEC. 1 DEADLINE?

Bethany Holliday: Unfortunately, I'm not seeing a mad rush of questions, which makes me a little nervous to be perfectly honest. I think we've been given a really great opportunity to take this time and use it as an evaluation period. We can decide as employers, "OK, how are we going to manage this? What are we going to do? What damages do we have to look at? Where are the holes in our policies?" and come up with a plan. It seems that a lot of people don't realize that this is official. This is going to happen Dec. 1. So we need to get ready for it.

Joe Schweppe: I am seeing more demand for our time and attendance sys-

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A non-discretionary bonus usually has some sort of parameters around it that the employee is aware of.

BETHANY HOLLIDAY,
The Cornerstone Insurance Group

tem, because most employers are now faced with tracking more employees time. However, it does not seem like a mad rush by any means. I liken this to the announcement of the Affordable Care Act. Most employers hoped it would just go away, so they waited to implement a plan to track part-time versus full-time. This is very similar, with less of a chance to be delayed.

▶ ARE THERE PENALTIES INVOLVED IF YOU'RE NOT COMPLIANT?

Brian Pezza: If you're not paying people overtime, you can be subject to an audit by the Department of Labor in which they could assess penalties. Also, private suits can be brought where you're facing the possibility of double damages plus attorney's fees to the employee who brought it.

▶ DO YOU THINK WE'LL SEE THAT?

Brian Pezza: I'm certain you will. There's a pretty wide gap here of people who make above \$26,660 a year but below \$47,476 a year, and what are you going to do with them? This is where I'm seeing it as being a real concern, in certain types of industries where they have structural challenges with complying with this new rule. I think of small regional banks who may have branch managers or assistant branch managers who work a lot. But in a more rural area in particular, they're not making \$47,000 a year. So, what do you do there when you have the top person at the branch who's got to be punching a time clock, metaphorically, of course? What are you going to do structurally when maybe you can't afford to bring them up to \$47,000 a year? These companies are going to have to figure out how best to handle that situation where there's no question that the employee is exempt on the duties angle, but not on the salary level. And, retail is going to be hit hard as well as fast-food restaurants. There are structural difficulties with just saying, "OK, we'll just comply with this now." Because they need their people to work hard, and they need them to work a lot of hours.

Bethany Holliday: Also, the quarterly payout is only applicable to the some of the exemption classifications we've previously mentioned. Highly comped employees can still have an annual non-discretionary commission or bonus payout at the end of the year.

Joe Schweppe: This is probably the most significant question that will impact employers. Employees who are now not exempt from overtime based on not meeting the new salary requirement, will have to include the bonus/commission in a weighted average overtime rate if overtime is earned in the same period as the commission and bonus. Since bonuses can be spread over multiple pay periods, there are few ways to automate this calculation, but electronic time and attendance systems make it much easier to determine the weighted average overtime rate.

▶ WHAT MIGHT COUNT AS A NON-DISCRETIONARY BONUS OR COMMISSION THAT AN EMPLOYER CAN NOW COUNT TOWARD THE SALARY LEVEL TEST? FOR EXAMPLE, IF AN EMPLOYER GIVES CHRISTMAS BONUSES EVERY YEAR CAN THOSE COUNT?

Bethany Holliday: A holiday bonus will not necessarily count because that's a discretionary bonus. The employer doesn't



have any sort of parameters in place identifying that, "If we meet these thresholds, we're going to give everybody an end-of-year bonus." Non-discretionary bonuses on the other hand, which are commissions or bonuses that are paid out based on certain performance or sales requirements, whether it be the employee's personal requirements or the company's on a whole, do count. So, if the employee has to go out and sell 20,000 widgets in a particular quarter to get that quarter's bonus, that's a non-discretionary bonus. If he or she only sells 15,000, they wouldn't qualify for the bonus, it's a pretty black-and-white thing. However, if a manager or an owner of a company is feeling generous because they landed a big account that particular quarter and want to give back to the employees, so they give everybody a \$500 check – That's not as black and white. Those are things that kind of ebb and flow and would be considered discretionary. A non-discretionary bonus usually has some sort of parameters around it that the employee is aware of.

Bethany Holliday: Also, the quarterly payout is only applicable to the some of the exemption classifications we've previously mentioned. Highly comped employees can still have an annual non-discretionary commission or bonus payout at the end of the year.

▶ IF I CHANGED MY EXEMPT EMPLOYEES ELIGIBLE FOR BONUS TO NONEXEMPT, IS THERE ANYTHING I NEED TO BE AWARE OF?

Joe Schweppe: This is probably the most significant question that will impact employers. Employees who are now not exempt from overtime based on not meeting the new salary requirement, will have to include the bonus/commission in a weighted average overtime rate if overtime is earned in the same period as the commission and bonus. Since bonuses can be spread over multiple pay periods, there are few ways to automate this calculation, but electronic time and attendance systems make it much easier to determine the weighted average overtime rate.

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Brian Pezza: So that's one of the more difficult things of administering the FLSA. It's not just saying, "OK. Well, here's your hourly rate. You make \$20 an hour, so your overtime's going to be \$30 an hour." Well, what if you make different rates during the course of the work week? So Joe's talking about how he may have to apportion a bonus back over time, that's one of them. But if you have shift differentials, if you have, say, somebody covering for a coworker and you have a policy where they may make a higher or lower

rate for that time, you have to look at how much they made overall that week and come up with essentially an average that is the regular rate. So their nominal rate may be \$20 an hour in this hypothetical, but their regular rate may vary. You're supposed to determine that every work week. It becomes difficult if you happen to have a workforce where people work at multiple rates for different times.

► **CAN ONE PERSON OR MORE BE CLASSIFIED AS NONEXEMPT WHILE ALL THE OTHERS IN THE SAME POSITION ARE EXEMPT?**

Bethany Holliday: If you have a department of 10 customer service representatives, even if half of them are currently above the \$47,476 threshold and the rest fall below that but are above the current \$23,660 threshold, all of them right now are probably considered exempt. That leads to a whole other tangent on whether or not they actually meet the duties criteria, but let's just say that all of them are currently being paid on an exempt level. After Dec. 1, that's going to change and half of them will remain exempt level employees, while the other half will have to track their time because they will become nonexempt.

Joe Schweppe: Yes, it is completely possible to have a position classified as exempt, but if the employee does not earn enough to meet the new minimum as of Dec. 1, the previously exempt person with the same job duties as the person sitting next to them are now considered nonexempt and eligible for overtime. It will be pretty telling who in the same department does not make the minimum since they will be asked to track hours. This is why many customers have tried to limit this by using repeatable schedules which auto populate the timesheet. It's important to provide the employee with the means to account for time that deviates from the fixed schedule, to account for overtime.

► **THIS MAY BE A CASE WHERE SOMEBODY'S WORKED THEIR WAY UP TO THIS JOB OVER TIME AND SOMEONE ELSE IS NEW TO THE JOB?**

Bethany Holliday: Right. So I could have a pod of 10 employees, and on any given side of the cubicle wall, one of them is clocking time and the other one isn't. Which is going to be a huge morale issue. Employees are going to at least know that Sally on the other side of wall makes at least \$47,476, and I'm on this side of the wall and I don't. Employers need to take a look at their roster and compare job descriptions or job classifications. Line all your customer service reps together and see how much each of them make. My personal recommendation is to either make levels within those job classifications, so, for example you have CSR level one and CSR level two. In order to become a level two, you have to have some certification or degree or you have to have a specified number of years of service before you can move up to level two, which would then put you into the higher bracket of pay. Or you bite the bullet and make them all exempt or all nonexempt, including those that are over the \$47,476 threshold. It's going to be a huge deal.

► **MEANING THAT THE ONES WHO MAKE THE LOWER SALARY WOULD GET A RAISE?**

Bethany Holliday: That decision will typically require a cost analysis. Employers could potentially give employees a raise to push everyone above the threshold, but first they should review how much overtime employees are currently working. If an employee is currently earning \$42,000, but we expect them to work 50 hours a week, we know right out of the gate that the company is going to pay them 10 hours of overtime every single week. So, after we take that number and add it to the employee's base salary, we can decide if it would be cheaper to raise them above the \$47,476 threshold or to keep them at the current salary and pay overtime. And that doesn't even account for whether or not the employee is really exempt. If they don't meet the duties criteria, then the money is secondary. Employers should really take this opportunity to make sure everyone is properly classified.

Brian Pezza: There is a way if you have razor-thin margins for labor on your bud-

get, because I'm sure many employers do, where you can keep affected employees at the same compensation level, notwithstanding the new salary level. If someone is going to lose the exemption because they don't make \$47,476, then in order to keep them right where they are, you first need a really reliable estimate of how many overtime hours they work. Then you can calculate an hourly rate that is something lower than their current salary divided by 40 hours a week that also assumes the payment of time and a half for the overtime they are expected to work. So you end up at the same compensation level. You just say to the employee, "Look, we're not trying to harm you, we're trying to continue to pay you the same amount, but we have to do this a new way now." It's a complicated thing to calculate, because it's so hard to get reliable information from people about how much they've been working when they don't track it and they're not used to tracking it.

► **HOW DOES A MANAGER HANDLE THIS?**

Bethany Holliday: Create distinct job classifications, so you either have a senior and a junior level or level ones, twos and threes. Set some sort of basis to explain why one employee is exempt while the employee on the other side of the wall is not. This also is an opportunity for employers because they won't take the heat for something for once. This is a moment where businesses are just trying to comply with what the law says, and that requires looking at jobs and making adjustments to them. Employers can say to employees that, going forward, the law indicates that if you're making this particular dollar amount that you're eligible for overtime, and we want to make sure you are compensated for all of the hours that you're working. We want to make sure that you're recognized for the time that you're putting into the organization. Therefore, we want you to track this time. Employers also need to look at the employees who are above that \$47,476 threshold, and determine if they really meet the exemption duties criteria. Right now many employers don't understand the difference between exempt and non-exempt, so they're simply saying, "Well, I pay them a salary. Whether that salary is \$25,000 a year or \$85,000 a year, I pay them a salary and I expect them to work whenever I tell them to work." Many don't clearly understand the error in that comment; Employers should take this opportunity to look at job classifications and make sure they meet exemption criteria. There are many employees who will be making \$48,000-plus a year, but are still a non-exempt employee. Then consider your entire department of 10 CSRs and ensure sure that all of them are eligible for overtime. It seems intimidating, but "eligible for overtime" from an employer's standpoint means I can put parameters in place that limit the number of overtime hours employees are actually putting in. Going back to what Brian just said, a lot of employees think that they work 50 or 60 hours a week and they don't. As an employer, I can put policies in place to make sure that I'm limiting the

amount of overtime that they're working. We have time now to consider, so employers should take this summer and really examine how many e-mails are sent after 5 p.m. or over the weekend. Ask, "How much work is actually being generated in after-hours production?" and come up with a baseline. Chances are, it might be one or two hours that you can easily funnel off to another employee so you don't have that overtime in place.

Joe Schweppe: Ultimately, employers should already expect that many employees have shared their salary with their

friends at work. I'm certainly not suggesting it's a best practice, but it is reality amongst friends at work. It is going to be quite exposing to employers who do not feel they have properly compensated employees based on experience, education and skill. In that case, it may put employers on the defensive if the employee does not agree with the logic that went into the compensation plan. As long as an employer feels comfortable with their plan, it really should not be an issue. The real issue should just be the fact he one person has to account for their time and the other does not. In effort to less-

en the impact of now becoming nonexempt because of the salary requirement, some companies have created a timesheet that automatically loads the fixed schedule each week. The key point is to provide the employee with the opportunity to edit and submit the timesheet, which gives them the opportunity to record time worked in excess of scheduled hours. For more information about record keeping options, I would suggest reviewing the Department of Labor's recordkeeping regulations.

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Brian Pezza: The National Labor Relations Board, which is the agency that deals with private sector unions, polices employees' right to act for mutual aid and protection with regard to wages, hours and terms and conditions of employment. So we're seeing the NLRB take a very aggressive stance with social media policies with people talking about work on Facebook or other social media platforms.

Bethany Holliday: Going back to time records and whether or not they're actually keeping accurate time sheets, employees

who were exempt used to be able to work from home, log in from home and answer emails on their phone, may have to log those hours now as nonexempt employees. Employers really need to look at all that time and ensure its recorded as time worked.

Brian Pezza: We are hoping for some guidance from the Department of Labor on remote work. Because you don't have to count work that is de minimis in nature. So, if it's just so small, like somebody before they go to bed, they check their email for a minute, do you have to pay for that tiny fraction of an hour? Probably not. But where the line is going to be drawn is some-

thing that has very little guidance from the Department of Labor.

Joe Schweppe: If you have somebody who is now nonexempt, and you're transpiring with them and asking them to work on a project at home to get ready for a meeting the next day, and you know it but then you see their time sheet and they didn't record the hours, that could become a problem for you. Because that was compensatory time if it was significant time. Because theoretically if the manager knows that that person was working from home and didn't do anything about it, then that's a problem on their part, potentially.

► **WHAT ABOUT EMPLOYEES ON CALL?**

Brian Pezza: It depends on the type of on call. If somebody just needs to be available, but they can otherwise be doing their own thing, watching TV, sleeping, whatever, then under the FLSA, and this is not something that was changed by the new regulations; they are generally not required to be compensated for that. However, if they are told that they need to be within a very narrow space, have to be at this particular place at this particular time, and, yeah, maybe you can read the newspaper while you're there but you have to be ready to go and at that point, the time is no longer their own, then that is likely going to be compensable time.

► **HOW CAN HR COMMUNICATE THE CHANGES TO THOSE WORKERS WHO ARE NOW GOING TO LOSE THEIR EXEMPTION?**

Bethany Holliday: I think going to those employees and letting them know, "Listen, we've been looking at our policies. As you're aware, the law is changing and we are working to make our policies and procedures in line with the law. As a result, we're going to be changing you from exempt to nonexempt and this is what the new expectations are." If they need to document their time, it's best to say, "Hey, we want to make sure that you're being compensated for the time that you're working. So we want you to track all of your time worked."

Joe Schweppe: I think the communication is important because it demonstrates you're proactive and not waiting to react to a employee complaint. And it also gives HR an opportunity to talk about career paths within the organization. If an employee is only losing their exemption based on the new salary requirement, they may need to hear about the salary range of the position, and what lies ahead.

Brian Pezza: In some of the industries that I was mentioning earlier, that is the case. But what this really gets to is the nub of what it means to be a white-collar worker. Does it really mean that you make something below the poverty level for a family of four? Is that person making \$23,660? Is that what we consider to be white-collar? And the Department of Labor said no. What they did has a really interesting symmetry, that the new level of \$913 a week is very close to the original salary level from decades ago if you adjust for inflation.

Bethany Holliday: There are parameters in the new legislation to upgrade and reevaluate these requirements every three years automatically. One thing to be aware of, as well, is other states have minimum thresholds, which right now are usually higher than the federal level of \$23,660. In many cases, the states are lower than the new \$47,476. Inevitably this means that the state thresholds are also going to go up. If you're operating in a state like California, the employer is still going to have to be cognizant of what that salary threshold is in California. It can be confusing, so checking with an expert is the best way to ensure your business is complying with the changing regulations.

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