



Question #1

Is the FLSA Overtime Rule ever going to go into effect?

Answer

Whether the FLSA Overtime Rule will ever go into effect remains an open question and will not be known until the Court makes a final determination on this issue at a future (and at the present time, unknown) date.

In the meantime, our recommendation is that you continue preparing for the FLSA Overtime Rule (i.e. continue your analysis and decide your intended course of action) because the Rule may still ultimately go into effect, but refrain from making any changes until the Court issues its final ruling on the issue.

Question #2 and #3

I have already given my exempt employees a salary increase to meet the salary requirement under the now-enjoined rule, can I reduce the employees' salaries back to the old levels, since the increase is no longer required?

I have informed my exempt employees that they will be receiving a salary increase to comply with the requirements under the now-enjoined rule, can I rescind the planned salary increase, as it is no longer necessary?

Answer

No. Regardless of whether a salary increase was already implemented or it was simply communicated to certain employees, any salary increase that was given (or communicated) to exempt employees in order to comply with the now-enjoined rule should be honored.

There are several reasons for this position. First and foremost is employee morale. Rescinding a salary increase will negatively impact the morale of those affected employees and cause a great deal of discontent in the workplace. In addition, such an action may expose the company to claims for failing to follow-through with a promised salary increase and/or misclassification, among others.

Question #4

I have already reclassified some of my formerly exempt employees as non-exempt. Since the rule is not going into effect, can I reclassify them as exempt?

Answer

Not necessarily. Before making any further changes to an employee's status (i.e. reclassifying a non-exempt employee back to exempt), you will need to verify that each employee you wish to reclassify actually meets the exempt duties requirements set forth in the duties test. You should only reclassify those positions that you have verified meet the duties test. Otherwise, you risk exposing your company to a FLSA misclassification violation.