

May 24, 2016

BOARD OF TRUSTEES – BOARD MEETING

Department Of Labor Final Overtime Rule

- Job titles never determine exempt status under the FLSA.
- There is a difference between a salaried employee and an exempt employee.
- Final rule takes effect on December 1, 2016.
- DOL rule increases the annual salary level for “exempt” status from \$23,660 to \$47,476.
- DOL proposes to automatically increase the salary level to qualify for “exempt” status every 3 years beginning on January 1, 2020.
- Administrative personnel that help run higher education institutions and interact with students outside the classroom, such as department heads, academic counselors and advisors, intervention specialists and others with similar responsibilities are subject to a special salary threshold that does not apply to white-collar employees outside of higher education. Instead, they are not eligible for overtime if they are paid at least as much as the entrance salary for teachers at their institution. There is also an exemption for those that work in computer related fields.
- Colleges may compensate overtime-eligible employees through the use of compensatory time off in lieu of cash overtime premiums.
- Coaches: Athletic coaches and assistant coaches may fall under the exemption if their primary duty is teaching, which may include instructing athletes in how to perform their sport. If, however, their duties primarily include recruiting athletes or doing manual labor, they are not considered teachers. A coach could primarily be responsible for instructing athletes, but also spend some time recruiting or doing manual labor and still be considered ineligible for overtime.

The amount of time an coach spends instructing student-athletes in a team sport is a relevant—but not exclusive—factor in determining the coaches’ exempt status. For example, assistant coaches who spend more than half of their time instructing student-athletes about physical health, teamwork, and safety likely qualify as exempt teachers. In contrast, assistant coaches, for example, who spend less than a quarter of their time instructing students and most of their time in unrelated activities are unlikely to have a primary duty of teaching

- Any employer may continue to pay employees a salary covering a fixed number of hours, which could include hours above 40.

Options:

- Raise salaries to maintain exemption
 - Pay current salaries with overtime paid after 40 hours
 - Reorganize workloads, adjust schedules or spread work hours
 - Adjust base wages and overtime wages (down).
- Barton has approximately 64 employees that are currently exempt employees that fall below the new salary level threshold. The cost of increasing the salary level of all 64 employees to the new exempt salary level would be approximately \$618,000.
 - Any increase for these positions changes the dynamics of a salary schedule (Compease and others). The net effect of increasing salaries for these positions will increase the overall salary schedule for all positions.
 - Barton’s solution would probably be a mix of increasing some salaries, moving some employees to hourly, and redefining positions.
 - A major concern is moving employees from exempt status (salary) to hourly. The transition to do so causes the employee to skip one month’s paycheck.
 - Another concern is once the employee is made hourly, after-hour and weekend tasks such as responding to an email become overtime or are then not allowed.

Each position will need to be analyzed to determine if it qualifies for one of the exemptions. If the position does not qualify for an exemption, we will need to then determine which option we would proceed with.