

Update on the New Department of Labor Overtime Regulations

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BIG NEWS!

The New York Times

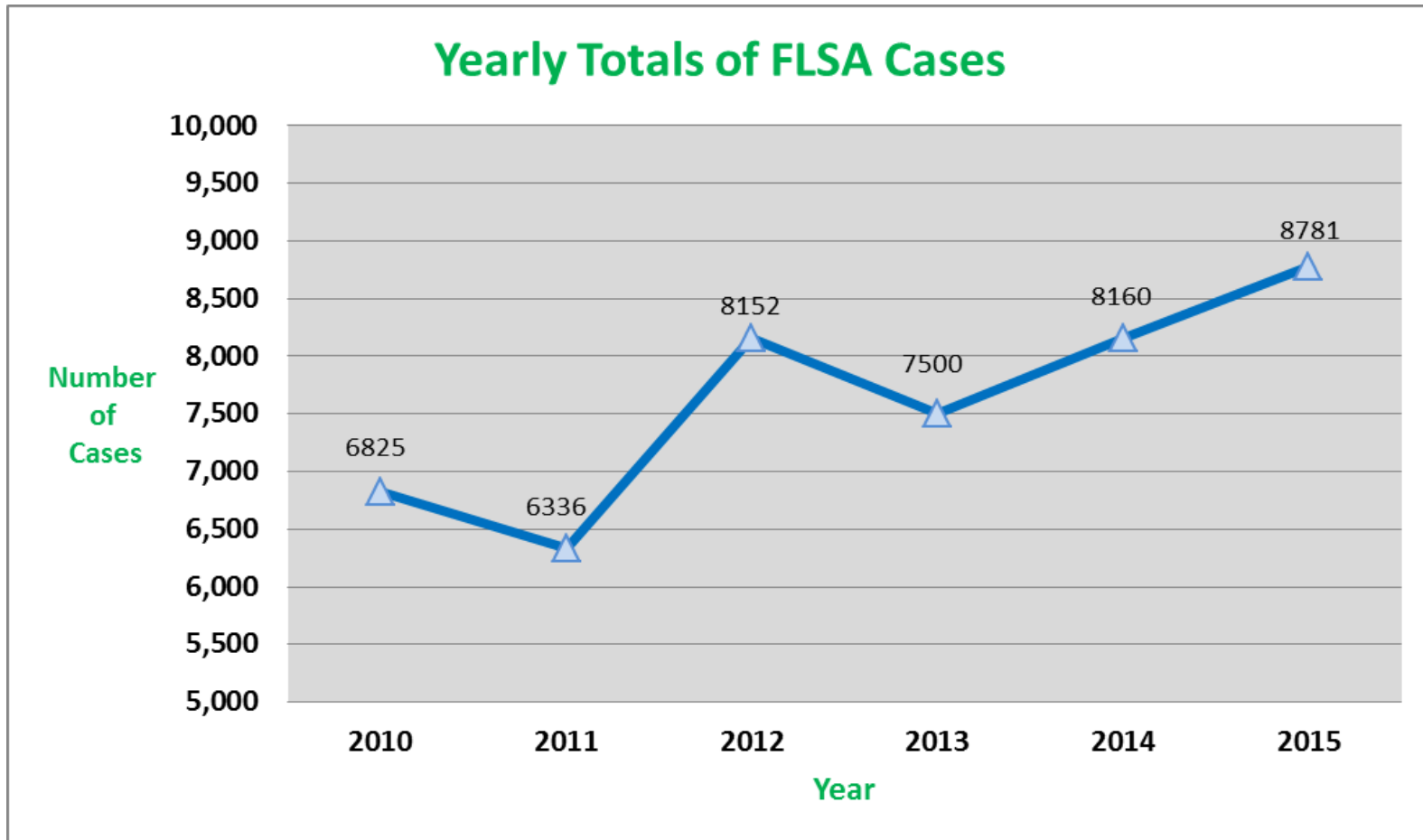
White House Increases Overtime Eligibility by Millions

THE WALL STREET JOURNAL.

Obama Administration Extends Overtime Pay to Millions

Overtime salary threshold doubled to \$47,476 a year

FLSA CASES ALREADY ON THE RISE



FLSA REFRESHER

- Non-Exempt
 - Paid hourly
 - Overtime eligible
 - Break and lunch requirements
- Exempt
 - Not overtime eligible
 - Executive, administrative, professional (EAP)
 - Outside sales

FLSA REFRESHER (CONT'D)

- White Collar Exemption: 3-part test
 1. Paid on salary basis or fee basis
 2. Meet salary level test
 3. Satisfy duties test

DUTIES TESTS

- Professional
 - “Learned”
 - Advanced knowledge
 - Field of science or learning
 - Academic training



DUTIES TESTS (CONT'D)

- Executive
 - Primary duty is management
 - Supervise two or more FTEs (or equivalent)
 - Authority to hire/fire (or suggestions given “particular weight”)



DUTIES TESTS (CONT'D)

- Administrative
 - “Primary duties” test
 - Office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers
 - “Discretion and independent judgment” with respect to “matters of significance”

DOL'S NEW RULES

- December 1, 2016 deadline
- Be prepared



CHANGE TO SALARY LEVEL REQUIREMENT

- ~~\$23,660~~ **\$47,476**
- Regular updating of salary level
- Changes to highly compensated employee exemption from \$100,000 to \$134,004

MOST AFFECTED JOB CATEGORIES

- Managers, assistant managers, payroll departments
- “Middle management”



MEETING THE SALARY THRESHOLD

- New rule: Up to 10% of salary level can be met by non-discretionary bonuses, incentive pay, and commissions
- Non-discretionary = guaranteed if you meet certain conditions
- Must be paid quarterly or more frequently
- If employee doesn't hit the salary level, then must make a "catch-up payment" by next pay period after quarter ends

BEST PRACTICES – INITIAL STEPS

- Consider use of attorney-client privilege
- Gather information
 - Review salaries of exempt employees
 - Review job descriptions
 - Compare job description to reality



QUICK NOTE ON JOB DESCRIPTIONS

- Not the deciding factor
- Accuracy matters
- Get employees involved
 - Management?
 - Line employees?

BEST PRACTICES – IMPLEMENTING THE NEW RULE

- Two options
 - Maintain exemption and raise salary
 - Reclassify as non-exempt

CANDIDATES TO MAINTAIN EXEMPTION

- Reasonable to increase salary?
 - Evaluate cost
 - Consider nondiscretionary bonuses
- Significant hours over 40?
- Duties test?
- Work not easily reassigned or divided?
- Morale concerns?

CANDIDATES TO RECLASSIFY

- Far from new salary level
- Don't really meet duties test
- No significant OT impact (low hours/week)
- Exempt duties could be reassigned
- Duties could be divided among multiple employees
- Consider impact
 - Need to track hours, breaks, OT
 - Morale

TAKEAWAYS

- December 1 is approaching fast!
- Conduct a salary-basis review
- Consider a broader audit
- Make an implementation plan



QUESTIONS?

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