HR Compliance
Creating an Audit-Proof Organization
What We’ll Cover

- New Federal Overtime Rule
- Tips to Prevent/Prepare for a DOL or Misclassification Audit
New Federal Overtime Rule

Are you ready?
What are the New Overtime Rules?

- New salary threshold
  - ($455/wk to $913/wk or $47,476/yr)
- Automatic salary threshold increases every three years (1/1/20)
- HCE salary increase - $134,000
  - Minimum salary test & bonuses
- No changes to duties test
New Federal Overtime Rules

Why Now and How Does this Impact my Agency?

- Lack of minimum wage increases over time
- Stagnate cost of living increases
- Projected 4.2 million workers immediately eligible for overtime
- Family friendly workplaces
- All employers covered
New Federal Overtime Rules

Exempt v Non-exempt, what’s the difference?

- Overtime = 40+/wk (and/or 8+ day)
- Meal periods
- Timekeeping
- Duties test and salary test

Now
CA Minimum Wage - $10/hr
2x Min Wage ($41,600)
New Federal Overtime Rules

White collar exemptions (EAP workers)

- Executive
  - Managing enterprise, depart, or sub-division
  - Supervision of 2+ FTEs
  - Hire/Fire
- Administrative
- Professional
- Highly Compensated

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New Federal Overtime Rules

White collar exemptions (EAP workers)

- Administrative
  - Office or non-manual work related to business operations
- Executive
- Professional
- Highly Compensated
New Federal Overtime Rules

White collar exemptions (EAP workers)

- **Professional**
  - Work requiring advance knowledge in science or learning that is intellectual in character and requires prolonged course of specialized intellectual instruction
  - Creative professional exemption – creative endeavors requiring invention, imagination, originality or talent

- **Executive**
- **Administrative**
- **Highly Compensated**
New Federal Overtime Rules

White collar exemptions (EAP workers)

- Highly Compensated Employee (exclude CA)
  - Minimal Duties
  - $134,004/yr (12/1/16)
  - 2/3 bonuses/incentive pay

- Administrative
- Executive
- Professional
New Federal Overtime Rules

White collar exemptions (EAP workers)

- Primarily Engaged
- Discretion & Independent Judgement

- Computer
- Outside Sales
New Federal Overtime Rules

What should I be concerned about?

- No consideration of regional differences in wages
- Loss of exempt positions and employee flexibility
- Employee perceived “demotion” and lack of “prestige” if re-classified
- Reduced pay and no overtime
- Past classification practices - tread carefully when making changes
- Bonuses count, sort of (CA excluded)
New Federal Overtime Rules

- **When is it effective and will it be delayed?**
  - December 1, 2016

- **What am I required to do?**
  - Ensure your exempt employees meet the minimum salary threshold
What should I do to prepare for the new federal overtime rule to be eff 12/1/16?

- Audit your exempt employees to ensure proper classification (salary & duties)
- Increase salaries if exempt employees will not make the minimum salary threshold of $47,476
- Reclassify exempt positions to non-exempt positions if salary threshold cannot be met
- If reclassifying exempt positions, be sure to provide training to reclassified employees and their managers on proper timekeeping procedures and taking meal/rest breaks
- Implement strategies for misclassified employees
- Seek legal guidance for risky situations
Agency Audits

Creating an audit-proof organization
Agency Audits

Creating an Audit-proof Organization

Regulatory Agencies
- FEDERAL (DOL, EEOC) – discrimination and wage
- STATE (DLSE, EDD) – discrimination, wage, I.C.
- OSHA – safety, IIPP

Why does an Audit happen?
- Industry targets - DOL
- Disgruntled EE’s - DOL
- High Ex-Mods - OSHA
- UE Claim Filing – STATE (EDD)
Typical Audit Violations

- Wage and hour
- Exempt v non-exempt
- Timekeeping and payroll violations
- OT and Travel time
- IC v EE misclassification
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Employee vs Independent Contractor
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What happens in a DOL audit?

• Low hanging fruit - posters, workers comp
• Exempt v Non-exempt
• Record review – timesheets, pay stubs, payroll records (*download and have available*)
• Access to records – copies v camera
• Interview employees
• Request phone numbers for employees
  ○ inform of potential call
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What happens in a misclassification audit?

• IC file review
  ○ Agreement, insurance, w-9
• Incorporated contractors likely excluded
• Individuals paid under SSN high risk
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Tips for Successful Maneuvering through a DOL Audit

• Contact the RIGHT counsel
• Be nice! “I want to fully comply”
• To delay or not to delay….That is the question
• Negotiate!
• Explain industry practices
  o Subsidized payments and child care workers
  o Truck Drivers
• Consider using a consultant
• Review records in different location
Tips for Preventing a Misclassification Audit

• Avoid Independent Contractor No-No’s
  ○ Personnel Files
  ○ Timesheets
  ○ Paying fees under SSN
  ○ EE’s and Contractors performing the same service
  ○ Biz cards
  ○ Voicemail/Email
Tips for Preventing a Misclassification Audit

- Strengthen IC status
  - Incorporation – W9 Form
  - Written Agreement - termination conditions
  - Invoice – make payments based on invoices
  - Other clients
  - Insurance
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Audit-Proof your Agency by . . .

- Conduct a mock audit
  - Timesheets, overtime, exempt vs. non-exempt
- Follow proper payroll rules
  - Travel time, final pay, comp time, stand by pay
- Keep your handbook up to date and follow it
- Address employee concerns timely

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Thank you!

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