

# DOL Overtime Rules

EmployShare, Inc.

EmployShare created this presentation in mid-2016 to help advisors prepare for the Department of Labor's Final Rule on Overtime Exemptions that was to be effective December 1, 2016.

On November 22, 2016, in a surprise opinion, a Texas Judge granted a nationwide preliminary injunction halting the rule.

It's important to stay informed on the status of the rule. This deck includes more details on the current status, as well as our original recommendations on preparing for the original rule change.

# DOL Rule Change - Current Status

- On November 22, 2016, in a surprise opinion, a Texas Judge granted a *nationwide* preliminary injunction halting the Department of Labor's Final Rule on Overtime Exemptions that was set to take effect on December 1, 2016.
- The Judge held that the Department of Labor had no authority to set the salary threshold at \$913.00 per week and that by raising it to that amount, the Final Rule creates a "de facto salary-only test," and ignores the duties test.
- The Court further held that the Department of Labor did not have the authority to implement the three year automatic updating mechanism.

# DOL Rule Change-Current Status (Cont.)

- A preliminary injunction only preserves the status quo while the Court determines the Department of Labor's authority to issue the Final Rule as well as the Final Rule's validity.
- This ruling simply halts the December 1<sup>st</sup> effective date.
- Given the Judge's ruling and the results of the Presidential Election, the fate of this Final Rule remains uncertain.

# DOL Rule Change-Current Status (Cont.)

- Unfortunately for employers, this temporary injunction further complicates the road to compliance with the Final Rule.
- Employers are now faced with whether to proceed to implementation or await any future verdict regarding overtime exemptions.
- Other factors to consider are the possibility that the new Administration and/or Congress will take action to reverse or modify the Final Rule.
- Additionally, in the event that the injunction is overturned and the government would prevail, the December 1, 2016 effective date may be retroactively enforced. As with this surprise ruling, it is impossible to anticipate or predict how this will play out.

Original presentation content

# DOL rule change

- What it is
- What it means
- What you need to do

# Reminders of exempt v. non-exempt

- Non-exempt: entitled to overtime pay
- Exempt: not entitled to overtime pay
- All employees presumed non-exempt, unless proven otherwise
- There are “white collar” exemptions



# Don't make assumptions:

Salary  $\neq$  Exempt

Manager Title  $\neq$  Exempt

# “White collar” exemptions

## Executive

- Primary duty is management, supervision, genuine input
- Examples: Operations Manager, Chief Operating Officers, Practice Managers

## Administrative

- “Regular exercise of discretion and independent judgment”
- Examples: AFAs, Marketing Managers, high-level Business Managers

## Highly compensated employee

- Administrative, executive or professional employee
- Total annual comp of at least \$100,000 (effective 12/01/16: \$134,004)

# DOL rule change – what it is

- Executive and administrative exempt employees must receive minimum pre-determined salary each week
- This salary is increasing from \$455/week to \$913/week, or \$47,476 annually
- “Highly compensated” exempt employees must meet new salary basis of \$47,476 and receive total annual compensation of at least \$134,004

# DOL rule change – what it means

- All exempt employees, including those well over the minimum threshold, must be paid a fixed, pre-determined salary
- All non-exempt employees must be paid overtime for time worked over 40 hours/week
- Employers must track time for all non-exempt employees, even those receiving a salary

What if you don't get this right:



# Ok, here's the real deal...

Failure to properly classify and compensate employees can result in:

- Lawsuits by DOL and/or employees
- Reimbursement to the employee for lost income
- Criminal prosecution and fines up to \$10,000
- Imprisonment after second conviction

# DOL rule change – what you need to do

It's a long list...

- Review current employee classifications, comp, job responsibilities
- Examine new salary requirements at \$455 vs. \$913 per week
- If fall below \$913, reclassify employees, create new job descriptions
- Update salary and comp agreements
- Review time tracking systems and documentation
- Be prepared for surprise audit
- Analyze insurance to protect against potential wage/hour liability
- Consult with HR Specialist to ensure compliance