



Change in NC Overtime Law Could Help Nonprofits and Small Businesses

On May 18, the U.S. Department of Labor (DOL) finalized its new overtime rule. The new rule will increase the salary threshold for employees who are exempt from overtime pay requirements from \$23,660 per year to \$47,476 per year, starting on December 1, 2016. This will create significant financial hardship for many nonprofits and businesses. Because of a unique feature in North Carolina law, the dramatic shift in wage and hour law will affect virtually all employers in the state. **The General Assembly may be able to protect some nonprofits and small businesses from the worst effects of this change by amending the N.C. Wage and Hour Act during the 2016 short session.**

What is the proposed DOL overtime rule?

Under the Fair Labor Standards Act (FLSA), employees are entitled to time-and-half pay when they work more than 40 hours per week unless they qualify as exempt because they: (1) make a salary of more than \$455/week (or \$23,660 annually); (2) are paid on a salary basis; and (3) have primary duties that are consistent with DOL's definitions of executive, administrative, or professional positions. In July 2015, DOL published a proposed regulation to:

- Raise the salary threshold for executive, administrative and professional employees to the 40th percentile of all full-time salaried workers in the lowest-wage Census region. This is \$913 per week or \$47,476 per year.
- Automatically raise the salary threshold every three years year as salaries increase nationally.

When DOL released its proposed regulations in July 2016, it received nearly 300,000 comments, mostly from employers with concerns about the impact of such a drastic change in the salary threshold for exempt employees. The final DOL overtime rule, which will take effect on December 1, 2016, has only a slightly lower salary threshold than the \$50,440 level in the proposed regulations.

How would the proposed DOL overtime rule affect nonprofits?

Starting in December, thousands of nonprofit employers in North Carolina will immediately be required to pay overtime to their employees who work more than 40 hours per week. This will increase salary costs for many nonprofits. These nonprofits will need to respond by some combination of:

1. Reduction in services, such as child care, adoption and foster care services, domestic violence support, senior care, faith-based ministries, and food and housing support;
2. Cutting jobs or replacing full-time workers with part-time staff; or
3. Asking state and local governments to increase reimbursements for contracted services due to the mandate or seeking private donations to pay for sudden increases in salary costs.

Why would a change in state law matter?

FLSA only applies to businesses and nonprofits that are engaged in interstate commerce through either "enterprise coverage" (which mainly applies to entities with \$500,000 or more in commercial sales) or "individual coverage" (which applies to individual employees whose job functions include interstate commercial transactions). Currently, the N.C. Wage and Hour Act applies the DOL overtime rules to most North Carolina nonprofits and small businesses that are not engaged in interstate commerce. This means that the final DOL rules that take effect later this year will also automatically apply to nonprofits and small businesses that are covered by the N.C. Wage and Hour Act. **By amending the state overtime law to reference the DOL rules in effect on January 1, 2016 rather than the then-current rules, the General Assembly could protect many North Carolina nonprofits and small businesses from the negative effects of the changes in federal overtime rules.** This could preserve jobs in North Carolina, prevent an immediate increase in costs of government-funded services, and ensure that nonprofits don't have to reduce or eliminate essential services such as child care, domestic violence support, and food and housing assistance.

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