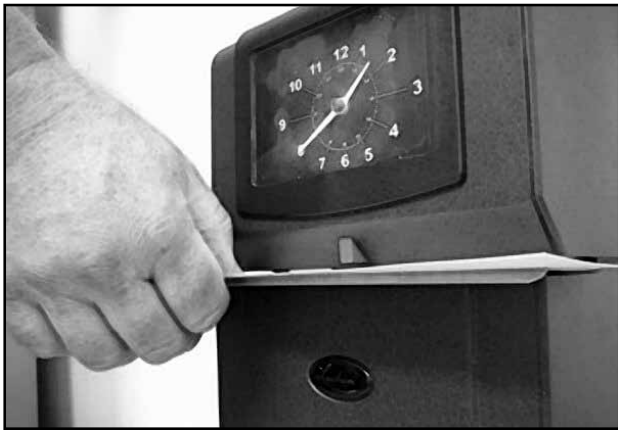


Will the New Overtime Rules Affect Your Construction Business?

If the sweeping new overtime rule proposed by the Obama Administration's Department of Labor goes into effect in 2016 as expected, it will almost certainly affect construction companies' operational costs and, quite likely, their bottom line. The Fair Labor Standards Act, passed in 1938, gives the president broad authority to set the rules without seeking congressional approval. The Department of Labor, at the direction of the president, can propose new rules under the federal rulemaking process, and that is exactly what President



Obama has done with his pen and his phone. Under the existing Fair Labor Standards Act, white collar workers making more than \$455 per week or \$23,660 per year need not be paid overtime for hours worked in excess of 40 in a given week. Under the current rule, most workers are not eligible for overtime if their salary exceeds \$23,660 a year. Under Obama's proposed new rule, that amount would increase to \$50,440 per year. Employees paid less than \$50,440 per year, regardless of their title or duties, would now be entitled to overtime for all hours worked over 40 in a given week (1.5 times their regular rate of pay). This is an increase of over 100 percent of the previous threshold, and many more employees will become eligible for overtime.

It is estimated that 5 million workers will be entitled to overtime as a result of this rule change. Many of these new candidates work in the construction industry. They include project managers, superintendents, human resources personnel, purchasing agents and many other office workers. These people who were salaried and received more than \$23,660 were not previously required to be paid overtime. Notably, some companies paid these employees overtime anyway. Now, they will be required to do so. Many observers expect

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Ask an Attorney



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that construction costs will rise as a result of the additional compensation that many companies will have to pay.

Prudent companies will need to be proactive to prepare for this change. For companies that want to avoid overtime claims/requests, handbooks and policies should be revised to prevent employees from working more than 40 hours without the employer's written permission. Management may want to be vigilant in requiring employees to stop working at the end of the day to avoid an argument that they acquiesced in the employees' overtime (which is treated the same as though the employer required the overtime). In other words, many employers are likely to become clock watchers to avoid or minimize their exposure for paying overtime. Expect more tracking and managing of employees' time. Employers may also want to become more strict about limiting or preventing employees from working remotely after hours by checking emails, revising documents, sending texts and the like. This is because tasks of this kind have been construed by courts to count as work time/hours worked in many cases. Some companies may opt to prevent employees from accessing email servers except at work, and others may simply ban their staff from checking email during off hours. Some companies will convert salaried employees to hourly pay, experts predict. Don't be caught off guard by these changes. Take steps now to prevent unanticipated costs and consider consulting with your legal counsel to make sure your policies are consistent with your intentions in dealing with the expanded overtime eligibility rules that are coming.