Background: Under the Fair Labor Standards Act (FLSA), employees are to be paid at a rate of at least one and a half times their regular rate for any hours worked over 40 in a week, unless they have been classified as exempt under certain specific statutory categories or meet other requirements in the regulations.

Under section 541 of the FLSA regulations, an employee may qualify as exempt from the overtime requirements if he or she satisfies a “primary duties test” (performs specific job responsibilities under the executive, administrative, professional, computer and outside sales regulations) and if he or she is paid on a “salary basis” (that is, salary does not fluctuate based on the hours the person works). Under the current regulations, the employee must be paid a salary of $455 per week ($23,660 per year) to meet the salary basis test.

Issue: On March 13, 2014, President Barack Obama directed the Department of Labor (DOL), through the Presidential Memorandum on Updating and Modernizing Overtime Regulations, to “modernize and streamline” the FLSA overtime regulations. The rulemaking process is still underway, and no clear announcements have been made about exactly what changes will be proposed. One potential change, however, may call for a significant increase to the salary basis amount of $455 a week to $910 a week or more ($47,320 annually). This means that a substantial number of employees, in a variety of different industries, currently classified as exempt from the overtime requirements would then be subject to the overtime requirements. The DOL may also amend the primary duties test for many otherwise-exempt employees (such as computer programmers, restaurant and retail managers, mental health professionals, and nonprofit managers), which may result in these employees losing their exempt status and therefore being subject to overtime coverage requirements.

Outlook: The DOL’s fall regulatory agenda indicated the proposed rule would be issued in February 2015. At this time, however, the proposed regulations have not been issued. Since March 2014, SHRM has been vigorously expressing the concerns of the HR profession on potential rule changes in direct listening sessions with the DOL. SHRM members participated in three listening sessions and provided input about how potential changes to the FLSA regulations would impact employers. As a leader on this issue, SHRM is chairing the Partnership to Protect Workplace Opportunity, the employer community coalition dedicated to responding to potential changes to the overtime regulations.

SHRM Position: The FLSA was enacted in the 1930’s and reflects the realities of the industrial workplace, not the workplace of the 21st century. The current FLSA regulations present practical
challenges when classifying positions because decisions are based on both objective and subjective criteria. As a result, employers acting in good faith could mistakenly misclassify employees as exempt who, in reality, should be nonexempt, or vice versa. Rigid FLSA regulations also make it difficult for employers to provide workplace flexibility to nonexempt employees. While SHRM appreciates the administration’s interest in modernizing the FLSA overtime regulations, it believes that enacting significant changes to the duties test would further exacerbate an already complicated set of regulations for employers, particularly small employers and employers in industries where managers often conduct exempt and nonexempt work concurrently. Substantial changes to the overtime regulations could further limit workplace flexibility for employees.

Talking Points:

- While the current regulations aren’t perfect, HR professionals have extensive experience working with them, so any new changes to the regulations should be carefully constructed to prevent further confusion and uncertainty, as well as potential litigation. SHRM and its members are committed to working with members of Congress to address the FLSA in a manner that meets the needs of both employees and employers.

- Changes to the overtime regulations could eliminate career opportunities and prevent employee advancement through the loss of exempt status for many otherwise-exempt employees.

- Changes to overtime regulations could effectively require employers to reclassify millions of salaried employees to hourly workers, resulting in less workplace autonomy and forcing employees to closely track their hours.

- Changes to overtime regulations will not necessarily result in a windfall of overtime hours for newly classified hourly employees. Instead, because they typically monitor labor costs closely, employers would likely cap or eliminate access to overtime work.

- Drastic overhauls to existing overtime regulations, especially efforts to more than double the salary basis amount, could have long-term impacts on the economy, with a larger impact expected in Southern states and rural areas.

- Changes to the overtime regulations will limit workplace flexibility for classified nonexempt employees because it can be more challenging to offer workplace flexibility arrangements given the need to monitor hours to avoid potential lawsuits.

- When overtime regulations were updated in 2004, many employees were reclassified as nonexempt, causing a decline in employee morale, a loss of a sense of “workplace status,” and increased distrust between employers and employees.

- **TELL YOUR STORY:** In your meetings with policymakers, describe the challenges associated with the FLSA. Discuss the practical effects for employees who might be reclassified from exempt to nonexempt status.

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