

# THE VOICE



**SPECIAL EDITION** **New DOL Overtime Rules**

**Must-Reads for Every Practice**

**Have you heard? Certain Bonus Payments Can be Counted Towards Salary Under New Overtime Rule!**

With the recent release of the DOL New Overtime Rule, many medical practices are interested in how they would be able to utilize bonus payments of offset the difference in the new salary threshold. Let's take a look at what can and can't be counted.

First things first. As many of you know, the new overtime rule will raise the standard salary threshold to equal the 40th percentile of weekly earnings for full-time salaried workers in the lowest-wage Census region, currently the South. This will raise it from \$455 a week to \$913 a week (\$47,476 for a full-year worker). The DOL admitted that they received a "robust" volume of comments from business groups on what constitutes "salary." More specifically, bonuses, incentives, and commissions have become more common in many medical practices' compensation arrangements for exempt employees.

The final rule will allow up to 10 percent of the salary threshold for non-highly compensated employees (HCE) to be met by non-discretionary bonuses, incentive pay, or commissions, provided these payments are made on at least a quarterly basis. Let's dissect this sentence.

- **Up to 10%.** Since the new threshold is \$47,476 a year, that means that up to \$4,747.60 of the \$47,476 can come from a qualifying bonus. Put differently, to meet the salary threshold, an exempt employee must receive \$821.70 per week in salary (90 percent of \$913), and the remaining \$91.30 in non-discretionary bonuses and incentive payments (including commissions) must be paid at least quarterly.

- **Non-discretionary.** Non-discretionary bonuses and incentive payments (including commissions) are forms of compensation promised to employees to induce them to work more efficiently or to remain with the company. Examples include bonuses for meeting set productivity (patient volume, patient satisfaction, provider satisfaction, etc) goals, retention bonuses, and commission payments based on a fixed formula. By contrast, discretionary bonuses are those for which the decision to award the bonus and

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**Contact HR|Experts:**  
 Direct: 919-431-6096  
 Main: 888-473-9778  
 Fax: 919-431-6094

brni.malpass@callhrexper.com  
 Phone calls and messages will be responded to 8am-5pm Monday-Friday.



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**Welcome to The Voice Newsletter for Summer 2016**

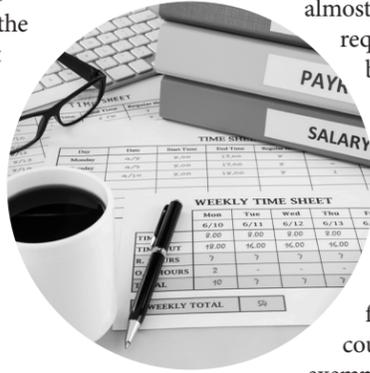
The Voice provides a quarterly update on external regulations at the state and federal level that affect your practice along with timely advice on ways to respond. It is provided as a benefit to Medical Mutual members.

The Voice is written by Breni Malpass, HR Advisor.  
 You can reach Breni at [brni.malpass@callhrexper.com](mailto:brni.malpass@callhrexper.com) or 1-800-HREXPRT.

## MUST-READs (cont.)

the payment amount is at the employer's sole discretion and not in accordance with any preannounced standards. An example would be an unannounced bonus or spontaneous reward for a specific act.

- **Paid at least Quarterly.** For employers to credit non-discretionary bonuses and incentive payments (including commissions) toward a portion of the standard salary level test, such payments must be paid on a quarterly or more frequent basis. If an employee does not earn enough in base salary and non-discretionary bonuses and incentive payments (including commissions) in a given quarter to retain their exempt status the Department permits a "catch-up" payment at the end of the quarter. The employer has one pay period to make up for the shortfall (up to 10 percent of the standard salary level for the preceding 13-week period). Any such catch-up payment will count only toward the prior quarter's salary amount and not toward the salary amount in the quarter in which it was paid. If the employer chooses not to make the catch-up payment, the employee would be entitled to overtime pay for any overtime hours worked during the quarter.



- **Highly Compensated Employees (HCE).** The Department did not make changes to how employers may use bonuses to meet the salary level component of the HCE test. The HCE test combines a higher earnings level requirement with a relaxed duties test. To claim the HCE exemption under the Final Rule, employers must pay workers at least the standard weekly salary level of at least \$913 per week on a salary or fee basis, while the remainder of the total annual compensation may include commissions, non-discretionary bonuses, and other non-discretionary compensation. Because employers may fulfill almost two-thirds of the HCE total annual compensation requirement with commissions, non-discretionary bonuses, and other forms of non-discretionary deferred compensation, the Department determined that it would not be appropriate to permit employers to also use non-discretionary bonuses and incentive payments to satisfy the standard salary amount. Note, the HCE exemption is really only used when you have a highly paid employee who doesn't meet all of the standard duties tests for executives, professionals or administrators. You could have someone making say \$105,000 who is still exempt because they meet all of the standard duties tests for executives, professionals or administrators.

You may still have questions about this provision of the new rule. If so, please don't hesitate to contact HR|Experts at [breni.malpass@callhrexpert.com](mailto:breni.malpass@callhrexpert.com) or 1-800-473-9778 (919-431-6096).

## OT Rule: Communications Templates Now Available

As we continue to prepare for the implementation of the new Overtime Rule that will go into effect December 1, 2016, we are creating additional tools and templates to help Medical Mutual policy holders.

In addition to the recently created Overtime Rule Planning & Implementation Tool, HR|Experts also has 5 communication templates for you to use. These templates can be used at various stages and focused for different audiences as you progress through the review and implementation process of the final OT rules for your business. Communication templates include:

1. General Communication: Senior Management
2. General Communication: Managers Supervisors
3. General Communication: All Employees
4. OT Communication: Impacted Managers and Supervisors
5. OT Communication: Impacted Employees

We believe you will find these tools helpful and encourage any feedback so we can continue to make your jobs easier! As always, should you have any questions regarding the analysis and implementation of this final OT Rule, please contact HR|Experts at [breni.malpass@callhrexpert.com](mailto:breni.malpass@callhrexpert.com) or 1-800-473-9778 (919-431-6096).

## Implementing the New Overtime Rules - An HR Business Partner Approach

Whether you are a solo provider, a Practice Administrator, or an Office Manager, you most likely wear many hats within your organizations, including that of human resource. While this isn't your primary duty, you can contribute to your practice and think like an HR Business Partner.

One of the key attributes of an HR Business Partner is the utilization of data-driven HR decisions and practices. The recent DOL decision regarding the final Overtime Rules provides you with an enormous opportunity to demonstrate your value to the business in this arena. Reasonable compliance is a goal, but so is developing a plan that works for your medical practice. In that light, HR|Experts has developed and published a detailed Overtime Rule Planning & Implementation Tool to help you with your analysis and recommendations for your business.

The Overtime Rule Planning & Implementation Tool will allow you to take a big picture/strategic approach across your organization to ensure consistency. Your next steps would resemble the following path:

- Examine your current state. Review positions and exempt employees within the impacted range (\$23,661-\$47,476) and if you're using the Highly Compensated Employee test those between \$100,000 and \$134,004. Identify the potential implications.
- Identify positions that meet the revised salary test but may currently not meet the job duties test for exemption status.
- Once you have a handle on the likely outcome(s) going forward your next step is to determine the potential financial impact to your business. Partner with your CFO / CPA accordingly to ensure accuracy and alignment of your analysis.
- In addition to examining the financial impact of any change in salaries also review the impact to Employee Benefits coverage. Many business's employee benefits are based on exempt / non-exempt status. Benefit plan documents may also have to be revised.
- Review your Wage & Hour related policies and procedures such as travel time, work schedules, training time, on-call status, etc. Are there operational and or financial impacts? This is an area not getting much press attention that could have a real practical impact on your employees and your business.
- Engage with your HRIS, payroll, and benefits providers to determine processing implications and related costs.
- Review with your Sr. Business Leadership.



## INTRODUCING A NEW HR|EXPERTS SERVICE... FREE MINI HANDBOOK REVIEW!

HR|Experts offers a FREE Mini Handbook Review for Medical Mutual policyholders! The Handbook Review includes the following:

- Highlight and identify possible federal regulatory issues
- Ensure the handbook's language lays the foundation for a positive employer-employee relationship
- Recommend additional policies for inclusion

*\*For more information, contact HR|Experts or send handbook directly to [breni.malpass@callhrexpert.com](mailto:breni.malpass@callhrexpert.com). Handbooks are reviewed in the order received. Please allow 2-3 weeks turnaround.*

- Now that you have completed your thorough analysis, develop a comprehensive review, including recommendations around: compensation changes, exempt/nonexempt changes, policy considerations, and financial implications to the business.
- Once final decisions are made you will need to fine tune your implementation and communication plans and develop any training that may be needed. HR|Experts has also developed several communication templates you can use.

As you go through this process and share data with your senior leadership, you are demonstrating your business acumen, partnering, and advisory skills and more importantly have developed a reasonable plan for your organization.

If you would like more information regarding the new OT Rules or a copy of the Overtime Planning & Implementation Tool, including communication templates, please contact HR|Experts at [breni.malpass@callhrexpert.com](mailto:breni.malpass@callhrexpert.com) or 1-800-473-9778 (919-431-6096).

## DON'T FORGET ABOUT THE HR|EXPERTS MONTHLY FREE MINI WEBINARS!



Your time is limited... but don't worry, our free mini-webinars are designed to quickly catch you up on hot topics in the human resources world. For the first 15 - 20 minutes, Breni Malpass, Medical Mutual's HR advisor, will cover trending HR issues. These webinars are informal and will allow time for Q & A. They will be held on the third or fourth Wednesday of each month, 12 - 12:30 p.m. Contact HR|Experts for registration information.