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New Overtime Regs Could Boost Overhead for Many Physicians

Robert Lowes | August 09, 2016

New overtime rules recently issued by the federal government promise to boost overhead for medical practices that underpay their office managers, experts say.

Overtime rules rival biochemistry in complexity, but the bottom line for many physicians is that they may need to increase salaries for their office managers and other staffers in leadership positions to avoid paying them for overtime. Alternatively, physicians can convert these staffers to hourly status and pay them overtime to avoid a potentially whopping raise, but that move comes with potential drawbacks.

The White House expects the changes, which take effect December 1, to boost wages by $12 billion over the next 10 years for workers across the economy.

A law called the Fair Labor Standards Act (FLSA) requires employers to pay 1.5 times their hourly wage, or time and a half, when workers put in more than 40 hours per week. Hourly workers are guaranteed overtime, and salaried employees also should receive it unless they qualify as exempt because they primarily perform executive, administrative, or professional duties (outside salespeople also are exempt, but they normally don't work for medical practices). And for such employees to be exempt, their salaries must meet a certain threshold.

The threshold is what's changed in the overtime rules. Since 2004, it's been $455 per week, or $23,660 per year, meaning that if an employee earned at least this amount and qualified as an executive, administrator, or professional, an employer didn't owe overtime. The threshold will increase to $913 a week, or $47,476 per year, on December 1. In other words, an office manager earning less than $47,476 a year should be paid overtime for hours 41, 42, and beyond. This salary floor will be automatically updated every 3 years.

So how many medical practices are paying their business leaders less than $47,476? The title of the top person varies, with mega groups led by chief executive officers (the initials MBA often follow their name), and smaller groups run by people with titles such as office manager or administrator. It's among the smaller groups headed by officer managers where salaries may dip below the new threshold, according to the Medical Group Management Association (MGMA).

According to an MGMA compensation survey conducted in 2014, the median salary for office managers was $52,822. However, 1 in 4 earned $42,536, and 1 in 10 earned $35,983. This last group is roughly $11,500 short of the new threshold.

A grossly subpar salary isn't exactly a badge of honor for a medical practice, said Andrew Swanson, an MGMA management consultant.

"Why are you paying somebody that far below market?" Swanson said in an interview with *Medscape Medical News*. "I suspect most small business owners want to do right by their staffs."

First, Ensure Employees Are Classified Correctly

Medical practices with salaried employees below the new overtime exemption threshold should not immediately consider a pay raise. Instead, they should make sure their employees are properly classified as exempt or nonexempt from overtime pay under FLSA, according to Karen Felix, a principal at the human resources consulting firm Marketstaff in Chicago, Illinois.

Good examples of staffers who warrant overtime are medical assistants and billing clerks. However, some medical practices mistakenly believe that paying such employees a straight salary automatically exempts them from time and a half, Felix told *Medscape Medical News*. If they work beyond 40 hours a week, such misclassified employees can come back and sue for overtime.

For a medical practice employee to be correctly classified as an exempt executive, he or she must be engaged primarily in managing the practice (as opposed to just checking in patients at the front desk). A bona fide executive under the FLSA not only regularly supervises at least two employees but also has a hand in hiring and firing people.

In larger groups, department heads also may qualify for the executive exemption. Examples of these employees are billing department managers and medical-assistant managers.

Practice members qualifying for a "learned professional" exemption from overtime are easy to spot because of the initials behind their name — MD, DO, FNP, PA, RN, etc. Their work requires advanced knowledge acquired through lengthy education.

Although executives and professionals aren't so hard to classify, the definition of job duties for the administrator exemption is "super slippery," said Eileen Maguire, an attorney in Indianapolis, Indiana, who specializes in health, employment, HIPAA, and wage and hour law.

"This person primarily must perform office or nonmanual work that relates to the management or general operation of the business," Maguire told *Medscape Medical News*, "and this is a biggie — their work must involve exercise of discretion and independent judgment."

An information technology pro who keeps the practice's computers lit up could qualify for the administrator exemption. A human resources director is another example.

Reclassifying a Salaried Exempt Employee Comes With Drawbacks

Once a medical practice makes sure it's properly classified its employees as exempt or nonexempt, it can begin to wrestle with the demands of the new overtime rule.

Consider the case of Jim, a hypothetical office manager paid a weekly salary of $692.31, or roughly $36,000 a year, who is classified as exempt from overtime pay because of his executive duties. Scheduled for a 40-hour week, Jim averages 260 hours of overtime per year. Karen Felix lays out some FLSA options.

- Increase Jim's pay to $47,476 to preserve his exempt status. Many practices, however, might view a raise of $11,476 too much to handle. And if an employee like Jim gets a big raise out of the blue, other employees may expect one, too, including those already above the new compensation threshold, according to Felix.

- Reclassify Jim as hourly nonexempt and convert his weekly salary into a wage of $17.31 per hour. However, the practice must pay him time and a half, or $25.97 per hour, for his 260 overtime hours, which represents a raise of $6752.20 — not as much as hiking his salary to the new threshold, but still hefty, and still problematic.

- Reclassify Jim as hourly nonexempt and divide his current salary by the sum of his scheduled 40 hours a week times 52 weeks (2080) and his average annual hours of overtime (260). In this scenario, Jim's hourly wage comes to $15.38. No raise here, unless he exceeds his projected overtime, in which case he receives time and a half.

Converting an office manager from an exempt salaried employee to a nonexempt hourly employee may solve financial problems, but it's a solution with drawbacks, said Felix. "Some managers may not want to be considered an hourly employee." A perceived demotion could lower morale. It behooves a physician, therefore, to clearly explain that changing an employee's status to nonexempt will not translate into a pay cut or micromanagement and that the practice is simply trying to conform to the new law, according to Felix.

A possibly face-saving alternative is to reclassify the office manager as a salaried nonexempt employee. In the case of the hypothetical Jim, he keeps his weekly salary of $692.31 even if he logs fewer than 40 hours. For any hours beyond 40, however, the practice owes him 1.5 times the hourly equivalent of his weekly salary.

Whether Jim is made salaried nonexempt or hourly nonexempt, Jim's employer is obliged to track his hours, which could make everyone unhappy. Jim ought to start counting all the time he spends in phone conversations and email exchanges with his physician bosses outside of his 40-hour week. Back in his salaried exempt days, nobody in the practice probably thought twice about asking Jim a business question on Sunday night. Now they may, with the cash register ringing.

Of course, limiting overtime hours is an option for practices that switch an employee from exempt to nonexempt. But to get the work done, that approach may require hiring more employees, which may create a new set of problems. And expecting an office manager not to put in extra hours is unrealistic.

More information about the new rules for overtime is available on the website of the US Department of Labor.

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