

- You're listening to HR Mixtape, Your podcast, with the perfect mix of practical advice, thought-provoking interviews, and stories that just hit different so that work doesn't have to feel well, like work. Now your host, Shari Simpson.

- Joining me today is Corinne Tirone, the director of Government Relations at Paylocity. She is an attorney with over 12 years of experience in legal research, payroll, and HR compliance. Her focus is on monitoring the legislative landscape at the federal, state, and local levels to help inform the organization's development projects, compliance strategy, and risk mitigation plans. In addition, Corinne serves on the board of the National Payroll Reporting Consortium and leverages strong relationships with agencies and industry groups to stay informed of regulatory trends and changing compliance requirements. Hi Corinne, thank you for joining me today.

- Hey, thank you so much for having me. Happy to be here.

- So we have a really interesting development in the Department of Labor in relation to proposed changes for the overtime threshold that I was hoping you could cover with us today.

- Yeah, sure, absolutely. So yeah, like you said, DOL has made an announcement that they're going to be putting out some proposed changes to the overtime threshold and that we're expecting to see those posted to the federal register in May of '23, so just a few months from now. They indicated that they were going to start looking at this as of last April. So I think a lot of us have been kind of patiently waiting for this guidance since spring of 2022.

- Yeah and this isn't the first time the government has tackled this, so maybe you could share a little bit of background around what the overtime threshold actually is.

- Sure, so the overtime threshold is the annual compensation limit that exempts some employees from overtime compensation eligibility. So if you make less than a certain amount of money per week, you get time and a half your typical pay rate for any hours worked above 40 in a work week.

- What is the current salary threshold?

- So today the salary threshold is a little bit over \$35,000 per year, or 684 per week. That means that if an employee makes at least that amount of annual salary and meets additional job duty requirements, the employer can choose to classify the employee as exempt from FLSA requirements both in terms of timekeeping and also overtime eligibility.

- So I know I mentioned this earlier, but when was the last time a

change to the salary threshold was actually made?

- Great question, and a couple of people are going to remember this. So if we have anyone listening in who's been in HR payroll for many years you're gonna kind of remember back in 2014, President Obama directed DOL to update and modernize the requirements for administrative, executive, and professional employees to be exempt from the FLSA minimum wage and overtime requirements. And in response to that, DOL did actually issue a new final rule in 2016. And at that time, the rule made some significant changes like three specifically that were pretty significant. The first was that it increased that minimum annual salary threshold to a little bit over \$47,000, which was a big increase. It also created automatic increases every three years and those would be determined based on the salary level information for full-time workers reported to the Bureau of Labor Statistics. It also permitted commissions and some other non-discretionary incentive pay to satisfy up to 10% of that minimum salary level. The part that I said a lot of people on the phone might remember is that employers all over the country started to get ready for that and they were reclassifying employees left and right. They were changing people's pay rates and it was kind of a mess and it was a lot of work for a lot of people in HR and payroll teams. And then kind of at the 11th hour, there were court challenges that led to that final rule being paused by a federal judge. And then pretty shortly thereafter, a new president took office and the rule pretty much died. So you fast forward and we have another new president, President Biden is in office and the DOL has decided to revisit the salary basis test and propose new rule changes.

- It's a lot to digest, especially for something that's been in the works for a while. Are there any exemptions to this threshold or is there a proposal that it applies to all?

- There are a few carve outs but they're primarily ones that have existed for a long time. So most listeners are well acquainted with the most expansive, well-known exception which is for employees that are engaged in what is considered bonafide executive administrative and professional and outside sales kind of roles. So you kind of hear this often referred to as white collar, EAP exemptions. And to qualify for that, employees have to meet certain tests regarding their job duties as well as have a certain salary. So if you expand on that a little bit, there's nuance. There's nuance to what I'm saying here and it's kind of primarily what I wanna pull at is job titles do not determine exempt status. It's the employee's specific job duties that need to be analyzed in addition to their salary.

- So what classifies an employee as non-exempt?

- So there are a few things that you would typically look for. So a non-exempt employee is usually paid hourly or they earn a salary

that's less than the minimum amount determined by DOL. They're also often typically taking direction from someone else as opposed to providing direction to others. They're usually not supervisors. There's a lot more to the analysis than that, especially, if you're in a corporate environment where teams are engaged in all different types of work. And it can be a little bit, it can be a little bit gray. So if you're not sure, if you're looking at roles in your organization and you don't know if they should be exempt or not, I would start by looking at the overtime fact sheets that are on dol.gov. They're pretty thorough because a lot of folks have questions about how to go through this analysis.

- I think that's a really good call out for a resource. As you think about this, do you have any insight on what the DOL will be proposing in May?

- Unfortunately, so I have a couple of my own kind of thoughts, which are, I would say very likely. I would look at that, what they proposed last time, as a likely benchmark. So that \$47,000, it seems reasonable to me that we might be right around that same point or perhaps even a little bit higher. But what the agency has actually shared about their goal here is that the rulemaking would be to update that salary level requirement. The salary level test has been part of the regulation since 1938. And what they're saying is that those regular updates as opposed to doing this every few years if that, will promote greater stability and it will avoid this being so disruptive as it was last time. And really those longer gaps between updates make it so that it's challenging for employers to do this well. And it can be disruptive both to the business and to the employee experience. What they're trying to do is avoid those lengthy gaps and provide appropriate wage protection.

- As employers kind of wait on this ruling, what should they do in the meantime to prepare for a possible change?

- That is a great question. And as I mentioned, there may be organizations that kind of already have a playbook if they went through this exercise in 2016. If not, I would say like the general framework is start by looking at what's happening in your organization today. So look at your current compensation data, figure out which employees might be impacted by the change. Again, if it were me doing it personally, I might use that 47,000 as like as a benchmark, I'm kind of just like, I'm throwing a dart based on an educated guess from what happened last time. It could be higher, it could be lower, but that seems like a reasonable place to start. I would also look at job descriptions for those roles, figure out if you think they really are classified correctly. Depending on that, once that new rate is announced, you may or may not need to change their pay rate. You may need to convert some of them, depending on your analysis of their roles, if they are supposed to be exempt or non-exempt. I would also

call out that this is really only at the federal level so FLSA sets base standards that employers have to abide by at the federal level. But like anything else, Shari, you know with compliance, states and locals they're doing their own thing. They could have higher stricter different wage requirements, they could have different duties tests as well. So I would really encourage employers to take a look at that at the state and local level as well prior to making any changes.

- So if an employer has employees that are gonna be affected by the changes made to the overtime threshold, what are some practical considerations to consider when deciding whether to change employees to hourly or to increase their salary to maintain that exempt status?

- So I mean, I think the first thing that kind of comes to mind for anyone in a business role is like the budget. You really have to think about the financial implications because there will be some, and I think, there is a degree to which you are not going to be able to avoid some of that impact. There is a change at the federal level. You're going to have to come into compliance with that change. So sitting down and doing the math and figuring out, what's my population of impacted employees? How does that math actually shake out? As well as again, how much of this, do I have any latitude? And depending on whether or not people are classified correctly, that will be really helpful. And then I think really also thinking about your current workplace practices for those affected employees and taking the time to think about how you can make an informed empowered decision for what's best for your business. Now following that, that's like kind of topline business, what we think about here. There's also the employee morale or employee experience to consider. So employees who have their status changed and then maybe went from salary to having to start clocking in and out, that might feel to them more like a demotion than anything else. And some of that is just like, what is the reality of how you're experiencing this versus the fact that this is actually just a federal mandate? You need to think about how you're messaging that because people are going to perceive it and feel it differently than perhaps you mean them too. So thinking about your communication, your change management, really being clear and intentional and thoughtful about how people are going to perceive that so that you can mitigate some of that reaction before it happens.

- Such a good point around change management because you're right, you might be in a situation where you have to make large sweeping changes and it's completely out of your control but that messaging and how you communicate that is definitely going to create a better experience for your employees rather than just rolling it out without any of that. So as we can kind of wrap up our conversation, when should employers expect that final rule to be released?

- Okay, so good question. As I said, we expect the proposed rule to come out in a couple of months. From there, it will go through notice

and comment just like any other regulation. So the agency will publish the proposed rule. They will allow for 30 days of public comment. At which point if any industry groups you're in have a comment, you should send those in because the agency does actually go through them, they read them all, they may or may not alter their direction a bit based on those comments. And then after that, the agency can release the final rule and from that point it will become effective, typically 60 days after it's published in the federal register.

- Well, Corrine, this is all really great information. If you're listening, we might have just given you a headache though. I have a little bit of PTSD from the last time we went through this. So appreciate you giving us the heads up and some things to think about as we kind of await to see what the DOL is gonna do.

- I hope you enjoyed today's episode. You can find show notes and links at thehrmixtape.com. Come back often and please subscribe, rate, and review.