



A Rising Overtime Threshold and Its Effect on the LTC Industry

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As of September 24, 2019, The Department of Labor (DOL) has finalized the proposed law to increase the overtime threshold for exempt employees. The number of workers eligible for overtime is expected to increase to 1.3 million American workers. The reaction from senior living industry representatives was generally positive, although concerns were voiced by those serving Medicaid beneficiaries.

The new ruling is effective January 1, 2020. Here's the breakdown directly from the DOL:

- Raising the "standard salary level" from the currently enforced level of \$455 per week to \$684 per week (equivalent to \$35,568 per year for a full-year worker);

- Raising the total annual compensation requirement for “highly compensated employees” from the currently enforced level of \$100,000 per year to \$107,432 per year;
- Allowing employers to use non-discretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, in recognition of evolving pay practices; and
- Revising the special salary levels for workers in U.S. territories and the motion picture industry.

The notion of overtime pay (and minimum wage) date back to the Great Depression when President Franklin D. Roosevelt rallied for New Deal Labor Protections. The goal was to discourage poor factory working conditions by making it more cost effective for employers to hire an additional employee rather than one employee working more hours i.e. time and a half.

Fast forward 80 years, and we have to continue to update our Fair Labor Standards to at least accommodate inflation. The current overtime threshold has been in place since 2004 and rests at \$455 per week, or \$23,660 per year.

The Obama administration had wanted to double this threshold to \$47,476 per year, which faced subsequent litigation and was not supported by the Trump administration. Since then, the Trump administration has put forth a more moderate proposal, though it still greatly impacts the senior living and other long-term care facilities.

Lilly Hummel, NCAL Senior Director of Policy, expressed her concern, “While we supported updating the rule, we are disappointed that considerations for long-term care, especially Medicaid providers, were not ultimately included, as this may indirectly result in increasing costs to residents.” Representatives were hoping there would be exemptions for certain long-term care facilities.

A challenge arises to meet these new standards, cover increased labor costs, and compete for talent in an area of workforce shortage. Providers should review salaried staff members and identify who may become eligible for overtime on the first of the year. Being prepared and budgeting for the increase will minimize consequences of the new rule.