

PBPA Podcast Transcript
Overtime Rules Are Changing Significantly - Is Your Nonprofit Ready?
(13:29 minutes)



Sireesha ([00:03](#)):

The US Department of Labor's new overtime rules represent a significant change for employers. These changes will result in many more employees, and even some executive directors, becoming eligible for overtime pay. With a solid understanding of the final rule, nonprofit employers may be able to better plan and budget to ensure compliance. In this episode of the PBPA Podcast, Max Barnas with Ford Harrison will talk to us about these changes, who will be eligible for overtime and will share guidance for nonprofits to navigate the new rules.

Sireesha ([00:50](#)):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Sireesha ([01:59](#)):

Max Bernas is counsel with Ford Harrison, where Max's practice is focused on the representation of management clients and matters related to labor and employment law. Max, thank you so much for being here to speak with us today.

Max ([02:13](#)):

Thank you. I'm happy to be here.

Sireesha ([02:16](#)):

So to start off with, Max, I'm sure many of our listeners are familiar with the general concept of overtime. But to start off, let's begin with some broad background. Where does the concept of overtime even originate?

Max ([02:31](#)):

The concept of overtime originates from the Fair Labor Standards Act, which is an, which was enacted in 1938, and the Fair Labor Standards Act, or "FLSA", establishes minimum wage over time, pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and the federal sector and state governments and local governments throughout the United States. So it's the FLSA that sets our minimum wage standards and our overtime requirements throughout the United States.

Sireesha ([03:06](#)):

And the FLSA does provide a lot of [employee] protections. Um, for any listeners who might be interested in learning more about it, PBPA has some resources on it. So I will provide a link for those on the episode page. But let's talk just about the overtime piece of it. Max, could you provide a brief overview of what is overtime?

Max ([03:31](#)):

Under the FLSA? Any amount of work over 40 hours and a seven day period is considered overtime. So the FLSA does not prescribe what a work week has to look like, but any amount of time over 40 hours, that's considered overtime. So for an employee who's then incurring overtime hours, so that's any time over above that 40 hour threshold, that employee under the FLSA must be paid what's called "time and a half". So that's the, the employee standard hourly rate plus an additional one half of that rate for each hour worked over 40 hours in that seven day pay period.

Sireesha ([04:11](#)):

And does this apply to all employees?

Max ([04:15](#)):

Well, no, it doesn't. The fair, the Fair Labor Standards Act includes certain exemptions from its overtime requirements. Now, these exemptions include employees in executive positions, administrative positions, professional positions, and even applies to certain highly compensated employees as defined by the Fair Labor Standards Act. So whether an employee meets one of these exemptions is first, uh, a fact specific inquiry regarding the responsibilities of the position. And in addition, the employee must be paid above certain salary thresholds or paid above a certain amount to meet one of these exemptions.

Sireesha ([04:53](#)):

And I'm gonna take a quick, make a quick note here that, um, most of our listeners are primarily in Georgia, and so that's why we're focusing today on the federal law because in Georgia, I don't believe we have anything that goes above and beyond that. Is that right, Max?

Max ([05:09](#)):

That's correct. Georgia does not have any requirements. While certain states do have more stringent requirements, Georgia is not one of them. Mm-Hmm. <affirmative>.

Sireesha ([05:17](#)):

So now let's talk about over time specifically 'cause that's what's in the news right now. Um, you mentioned the exemptions. Um, you mentioned "compensation", Max. What has happened with the new rule that was introduced by the Department of Labor?

Max ([05:33](#)):

Well, as you said, there was a new rule just introduced by the Department of Labor, and just recently then, April 23rd, 2024, the Department of Labor or DOL published its long awaited final rule, which raises the salary thresholds for certain, for certain overtime exemptions under the Fair Labor Standards Act. This rule, which was called by the Department of Labor, the Defining and Delimiting Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees" solidified the DOL'S

proposed rule from 2023. Previously in August of 2023, the DOL proposed to increase the salary threshold for workers.

Sireesha ([06:17](#)):

So Max, what is the new salary threshold?

Max ([06:21](#)):

Previously, the Department of Labor's salary threshold for employees in bonafide executive administrative and professional capacities was \$35,568 annually. So that's that threshold of floor you had to meet to, to invoke one of these exemptions. Now, the Department of Labor has raised that to \$43,888 annually. So this \$43,888 is now the new threshold You must pay an employee to meet one of these exemptions from overtime requirements. And effective January 1st, 2025, the rule would increase the salary threshold to about 1,128 per week or about \$58,656 annually. So that would mean that beginning January 1st, 2025, with limited exception employers would have to make sure that their employees are paid this \$58,656 in order to invoke one of these exemptions from the Fair Labor Standards Act overtime requirements.

Sireesha ([07:22](#)):

Well Max, this is a, you know, a big concern for some of our nonprofits out there because this, uh, will bring more employees onto the fold of who is eligible for overtime. And this could even include some executive directors. They're not accustomed to clocking in and clocking out. Do you have any tips for nonprofits, staff, or their boards to consider as they navigate this transition?

Max ([07:51](#)):

Certainly. First, employers can take a pause for the moment. The rule does not, is not effective immediately. Second as with any employment law, employers need to always continually evaluate and monitor legislation and new laws, as you know, and we just discussed under the new rule, certain employees then would become eligible for overtime. So it's always important to evaluate how long your employees are working, what their rate of compensation is, and how that aligns with the Fair Labor Standards Act. However, this is not the first time we've seen the Department of Labor raise the salary basis threshold for certain exemptions. And indeed we've seen this in the past of numerous legal challenges. So it's remains to be seen whether this rule will hold up. It's likely that some organization or interest group will challenge this rule, which could mean either a temporary pause or long-term pause of this implemented role.

Sireesha ([08:46](#)):

So nonprofits should take a few steps to make sure that they might be ready for if and when it does go into effect. So conduct an employee audit on a case by case basis, like you mentioned, Max. And nonprofits should determine where those employees would fall under the FLSA classification system and for any employees that may newly be eligible for overtime, consider what those implications are for your nonprofits budget. And also take a look at your timekeeping systems, make sure that they can adapt to this new scheme if in fact you're going to have more employees eligible for overtime and therefore tracking their hours. And Max, you alluded to, you know, in the past there's also been times where the overtime salary threshold has been changed. And I think last time it happened there was a lot of back and forth between the time there was a rule and was upon pause, and then it was ruled back.

What can our nonprofits anticipate when can they expect to be responsible for complying so that nonprofits can, can plan based on relevant information and be ready?

Max ([10:02](#)):

Certainly. Well, right now, the effective date of the rule is July 1st, 2024. So by July 1st, it's recommended that nonprofits or any employer reevaluate their pay policies and the responsibilities of their employees to see where they fall in line with one of these exemptions and whether now overtime would be applicable. Um, but again, it remains to be seen whether this rule will be challenged and whether it will be invoked. We saw this in 2016 when the Obama administration proposed a similar rule to almost double the salary threshold. Um, that rule was challenged shortly after its publication and a federal judge in Texas at the time and join the rule from going into effect. So it's recommended that employers certainly have this July 1st date on top of their radar, that they take steps to ensure compliance by July 1st. But by no means is July 1st a set or final date because there could be challenges from various groups.

Sireesha ([11:01](#)):

And Max, my final question is, if and when, uh, the salary cap does change, will it stay at this level for some time? I'm asking you to look into a magic ball here and tell me the future

Max ([11:17](#)):

<laugh>. Sure, and that's a great question. And I wish with every piece of legislation we had a magic ball, but actually this rule does have, um, a cost of living adjustment and, and built-in salary threshold basis in the rule. So the final rule actually provides for automatic updates every three years based on the latest earnings data beginning on July 1st, 2027. And these automatic updates then, which would be would, which would be effective July 1st, 2027, they would track the 35th percentile of weekly earnings of full-time salaried workers, and the lowest wage US census region, which is the southern us. So using that data beginning on July 1st, 2027, automatic updates would go into effect assuming this rule, um, is not challenged.

Sireesha ([12:08](#)):

Well, thank you so much Max for sharing this information with us. I know a lot of our nonprofits have been keeping an eye on this. And now that the final rule has been set out, if you haven't already evaluated your workers' nonprofits, this is definitely the time to do it. Um, look at your payroll practices, evaluate the hours that your employees, including maybe your executive director, are working and plan accordingly. We'll wait and see what happens. Max, thanks for being here. We appreciate you sharing your time and expertise with us.

Max ([12:44](#)):

Thank you.

Sireesha ([12:46](#)):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.