

## New Overtime Rules – How they affect your Ag operation

By: Patricia J. Nelson, CPA, CGMA, Shareholder with Anderson ZurMuehlen & Co., P.C.

The U.S. Department of Labor (DOL) issued new rules referred to as Fair Labor Standards Act (FLSA or the Act) for overtime wage payments on May 18, 2016. Employers must comply with the new rule by December 1, 2016 and it is estimated these new rules will cost businesses \$254.5 million to implement the new regulations.

Given the significant impact these changes could have on your operations bottom line, it is important to become familiar with the regulations and begin revisiting policies and employment agreements now to ensure compliance with the rules.

While an exemption to both the current and new rule exists for certain employers and employee groups, including agricultural employees, some additional distinctions have been made to clarify that while some employees' duties may fall under a known exemption, any work performed that is specifically not covered by the exemption would still be subject to the overtime regulations. Additionally, an agricultural employer who did not utilize more than 500 "man days" of agricultural labor in any calendar quarter of the preceding calendar year is exempt for the current calendar year. A "man day" is defined as any day during which an employee performs agricultural work for at least one hour.

For those employers subject to the Act, the penalties for failing to implement overtime changes are substantial. The Fair Labor Standards Act (FLSA) allows employees, who do not receive the overtime wages they are entitled to receive, to sue their employers. Employers that are found to have willfully violated the overtime pay requirements face possible criminal charges and fines of up to \$10,000 as well as the possibility of imprisonment for second offenders. Civil penalties may also apply.

Under the current regulations, employees earning at least \$23,660 a year (\$455 per week) did not need to be paid overtime pay for hours worked in excess of 40 hours per week. The new rule increases the salary threshold to \$47,476 per year (or \$913 per week). For purposes of meeting this threshold, an employee's salary does not include the cost of housing, meals, or health insurance you provide, but up to ten percent of the threshold may be met through non-discretionary bonuses, incentive pay, or commissions, if paid quarterly.

We recommend all employers consider updating and formalizing their employment agreements to address the changes to the salary threshold. For those employees who perform some administrative or management duties and do not meet the salary threshold, employers should track the hours worked by these employees and pay overtime on those hours worked in excess of 40 hours.

OK – in English please, what does this have to do with my farm or ranch?! Based on the rules issued we believe the following points are those that will primarily affect our Ag producers:

- Agricultural workers are exempt, but only for actual work done in operations (i.e. physical labor, operating farm equipment, etc.). An employee who performs significant administrative or management duties may have a portion of their pay subject to the overtime rules unless their compensation meets the new minimum salary threshold.
- Ag Employers who did not utilize more than 500 "man days" in any calendar quarter of the preceding calendar year are exempt for the current calendar year.

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- Employees who do not qualify for the agricultural exemption may be classified as “Executive Employees” and not subject to the overtime regulations if they meet the following Salary and Duty Requirements:
  - Salary Requirement –
    - a) Salary of at least \$913 per week OR
    - b) have 20% ownership and are actively involved in management,
  - Primary Duty Requirement –
    - a) Primary duty must be managing the business (or a division of the business),
    - b) must customarily and regularly direct the work of at least two or more other full-time employees, and
    - c) must have the authority to hire or fire other employees
- Agricultural employees who are immediate family members of their employer are exempt.

For employees who do not meet the requirements of any of the previous bulleted points, a method of tracking hours will need to be implemented for each employee. This will be a huge change (and challenge) for many agricultural employers. You will want to review the current hours and compensation for each employee and determine what hourly base pay rate you will employ for calculating overtime pay.

Contact your Anderson ZurMuehlen consultant if you have further questions regarding the new rules or would like assistance in implementing them.

\*\*Information in this article is not intended to constitute legal advice. Employers should consider whether the complexity of their situation warrants engaging legal counsel in this determination.