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STATE SENATOR • 17TH SENATE DISTRICT

Capitol Update

By Senator Howard Marklein

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When Federal Decisions Become Wisconsin Problems

The Federal government often makes decisions for states, local governments and private citizens without our input. Agencies, Congress and often, the President, send down mandates or make far-reaching decisions that have dramatic impact for a variety of reasons.

Eye-catching headlines often make people feel good, but the true implications and impacts of feel good changes can have extremely detrimental outcomes. It's easy to make a blanket change without fully thinking through, and taking responsibility for, the actual and practical application of the change. Several degrees of separation enable decision-makers to take credit for a positive, feel-good message while separating themselves from painful outcomes.

In May 2016, President Barack Obama announced publication of the United States Department of Labor's (DOL) final rule that makes changes to overtime regulations. This agency rule change (not a change that went through Congress), automatically extends overtime pay to more than 4 million workers in its first year.

According to the DOL, the Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. The rule:

1. Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South (\$913 per week; \$47,476 annually for a full-year worker);
2. Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally (\$134,004); and
3. Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.
4. Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level. <https://www.dol.gov/whd/overtime/final2016/>

The bottom-line is that any salaried worker making less than \$47,476 per year will be eligible for overtime pay. This sounds good – right? To some, it might. To employers and taxpayers, it is concerning.

On the surface, this may sound (and feel) good. However, this rule change, thrusts the Federal government into the employer-employee relationship with huge financial implications that could greatly

impact our economy, businesses, jobs and taxpayers. These rules apply to both the public and private sector.

In order to understand the impact of these changes on taxpayers, I asked the non-partisan Legislative Fiscal Bureau (LFB) for an analysis of the potential impact of the Federal Overtime Pay Administrative Rule Change on Wisconsin.

It is important to note that there are three ways to manage this rule change:

1. Make all of our “white collar” employees “exempt” from the overtime pay requirements.
2. Prepare (as best we can) to pay overtime to newly non-exempt employees at an undetermined cost.
3. Strictly limit our non-exempt employees to 40 hours of work per week.

According to the LFB, it is estimated that 1,101 full-time, executive branch employees would need to have their salaries increased by \$4.3 million annually to avoid the final federal overtime pay requirements. In addition, 17.2 part-time executive branch employees would have to have their full-time equivalent salaries increase by approximately \$100,000 annually. The maximum possible fiscal impact to executive branch agencies is estimated to be \$5.1 million annually.

As the steward of your taxpayer dollars, this rule change concerns me. We have intelligent, talented state employees who work hard every day for pay that is commensurate with their duties and roles. These rule changes would force us to either pay our employees more than we currently do or strictly limit their hours of work per week simply because the Federal government changed the rules.

I am also very concerned about private employers and small business owners who will be forced to comply with this change. How will they manage overtime rules? Will an employee be asked to end their work day, whether or not a project is completed? Will an employer incur unreasonable costs? Will they have to lay-off staff members and/or expect more from those they have in order to balance the books? How will currently “exempt” workers feel when their classification becomes “nonexempt”? Why should employers be forced into uncomfortable, unreasonable situations with long-time staff who have no problem with the way things currently operate?

Once again, the Federal government has thrust itself into relationships between employers and employees without considering the full impact of the change – or maybe they don’t care. We see evidence of this same situation when it comes to phosphorus regulation. For more information on the Phosphorus issue, please reference my [5/20/16 column](#).

As your State Senator, I will monitor the impact of this rule change on private and public sector employers and employees as it takes effect December 1, 2016. It will be an interesting discussion as we look toward the next state budget in 2017.

For more information and to connect with me, visit my website <http://legis.wisconsin.gov/senate/17/marklein> and subscribe to my weekly E-Update by sending an email to Sen.Marklein@legis.wisconsin.gov. Do not hesitate to call 800-978-8008 if you have input, ideas or need assistance with any state-related matters.

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