



Ultimate

SOFTWARE

People first.

Compliance HOT Topics

NYC APA Meeting

Presenter: Maria Luther, Director of Compliance

Agenda

- FLSA OT regulations
- State wage notice laws
- Paid leave laws
- EEO-1 Proposed Changes
- CEO Pay Disclosure Rule

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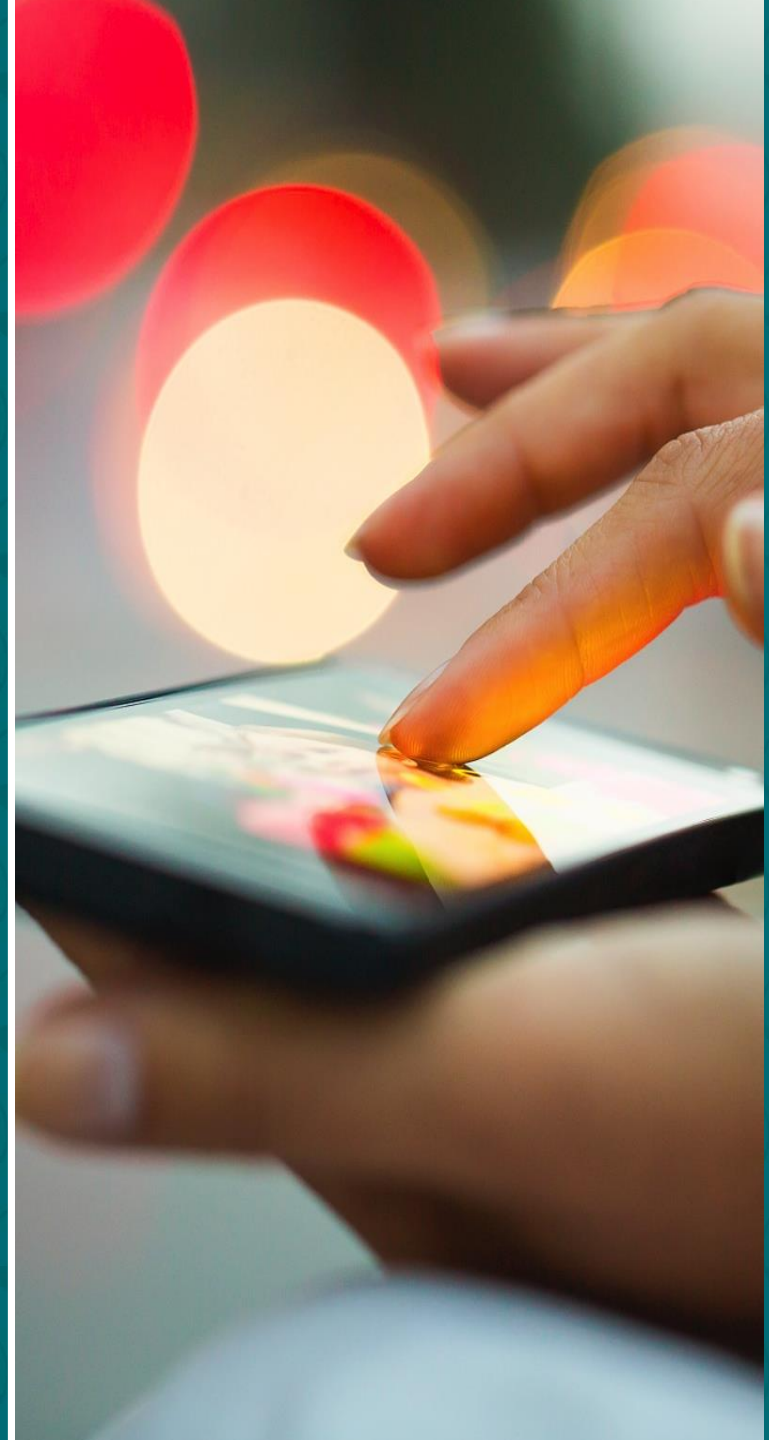
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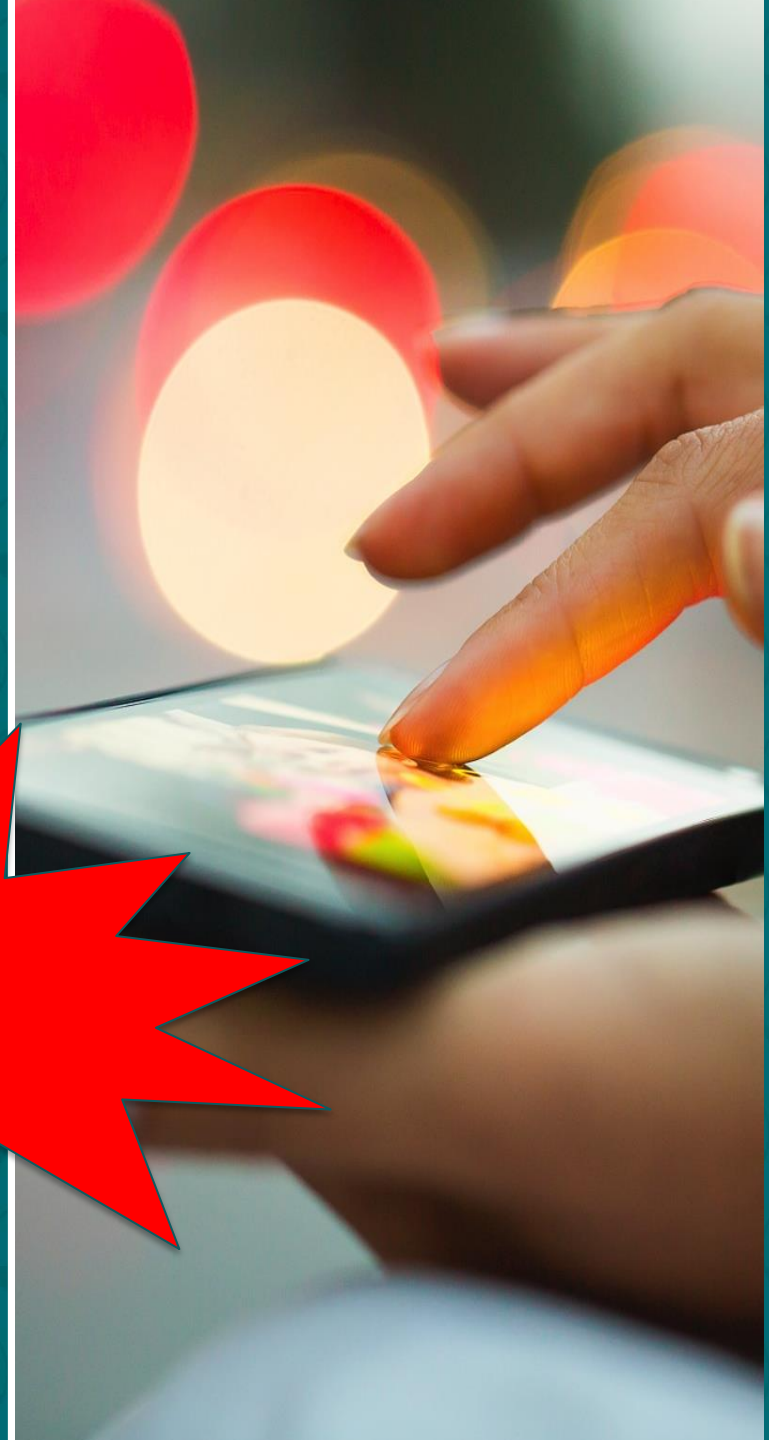
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Overview of FLSA white collar exemption changes



Overview of FLSA white collar exemption changes

Dec. 1st
Deadline



Summary of Changes: Minimum Pay

Old Rule	New Rule
Employee is exempt from overtime and minimum wage pay if paid more than \$455 per week.	Employee is exempt from overtime and minimum wage pay if paid more than the 40th percentile of earnings rate for full-time salaried workers (Southern region) of \$913 per week.



\$47,476 annually

Summary of Changes: HCE

Old Rule	New Rule
<p>A Highly Compensated Employee (HCE) is exempt from overtime and minimum wage if, in addition to meeting the duties test, they are paid more than \$100,000 per year.</p>	<p>Minimum pay threshold is raised to the 90th percentile rate of full-time salaried workers (Southern region) of \$134,004 per year.</p>

Highly Compensated Employees (HCE)

Government Agency	HCE Definition	Primary Use
DOL	<ul style="list-style-type: none">• New threshold amount increased from \$100,000 to \$134,004• Compensation may include annual catch-up payments, non-discretionary bonuses, commissions, and other non-discretionary compensation• Primary duties office or non-manual work	Prevent blue collar workers from being exempt from overtime
IRS	<ul style="list-style-type: none">• Owned more than 5% of the interest in the business at any time during the year or the preceding year, regardless of compensation, or• For the preceding years of 2015 or 2016, received compensation of more than \$120,000, and, if the employer so chooses, was in the top 20% of employees when ranked by compensation	Used in qualified benefit plan discrimination testing

Summary of Changes: Incentive Pay

Old Rule	New Rule
<p>Threshold salary amounts do not take into account nondiscretionary bonuses, incentive payments, or commissions.</p>	<p>Up to 10% of threshold salary amounts can come from non-discretionary bonuses, incentive payments, and commissions, if paid at least quarterly.</p>

Summary of Changes: Ongoing Adjustment

Old Rule	New Rule
Threshold salary amounts are fixed.	Threshold salary amounts will adjust every three years beginning January 1, 2020.

Compliance Strategies

**IN RESPONSE TO THE NEW OVERTIME RULE,
EMPLOYERS CAN:**

- A) Pay time-and-a-half for overtime work.
- B) Raise workers' salaries above the new threshold.
- C) Limit workers' hours to 40 per week.
- D) Some combination of the above.

Source: Department of Labor – Wage and Hours Division

Scenario 1: Reclassify to Non-Exempt

Opportunities

- Can manage expense impact by modeling pay
- Streamline worktime to work performed
- Employee moral may increase due to higher pay and/or more free time

Threats

- Change may be viewed as a demotion by employees
- Increased administrative costs due to time tracking/compliance issues
- Initial setup related to job codes, reclassification, time tracking, scheduling, etc.
- Employee work flexibility limited (e.g. doctors appointments, working from home, answering emails, etc.)

Scenario 2: Increase Employee Pay

Opportunities

- Higher employee moral
- Minimal change to employee schedule and work-life
- Minimal HCM impact

Threats

- Increased payroll expense
- Equity considerations
- Job duties changes

Scenario 3: Combinations to Consider

- Change based on specific organizational needs, increasing wages for some employees while reclassifying other employees to nonexempt
- Equity considerations need to be analyzed
- Review jobs where salaries cross threshold to take advantage of reorganization of job duties (may need to clarify)
- Utilize non-traditional employee classifications such as salary non-exempt and flexible work weeks
- Limit hours worked to 40 per week

Fluctuating Work Week

Fluctuating Workweek Basics:

- Employee is paid a fixed salary for all hours worked
- The fixed salary covers all straight time
- An overtime premium (half-time) is paid for all overtime hours
- Regular hourly rate varies by workweek
 - Salary/number of hours worked that week

Fluctuating Work Week

Requirements:

- Employee is paid a fixed salary regardless of hours worked
 - Non-discretionary bonus or premium payments are not permissible
 - Law is still shifting in this area
 - Discretionary bonuses may be allowed, if truly discretionary
- Salary must keep the regular rate of pay above minimum wage
- There is a clear and mutual understanding of the flexible workweek plan (get a written acknowledgement to be safe)
- The workweek must fluctuate
 - DOL says it must fluctuate both above and below 40 hours
 - Some courts have rejected this interpretation

Fluctuating Work Week

And there's so much more...

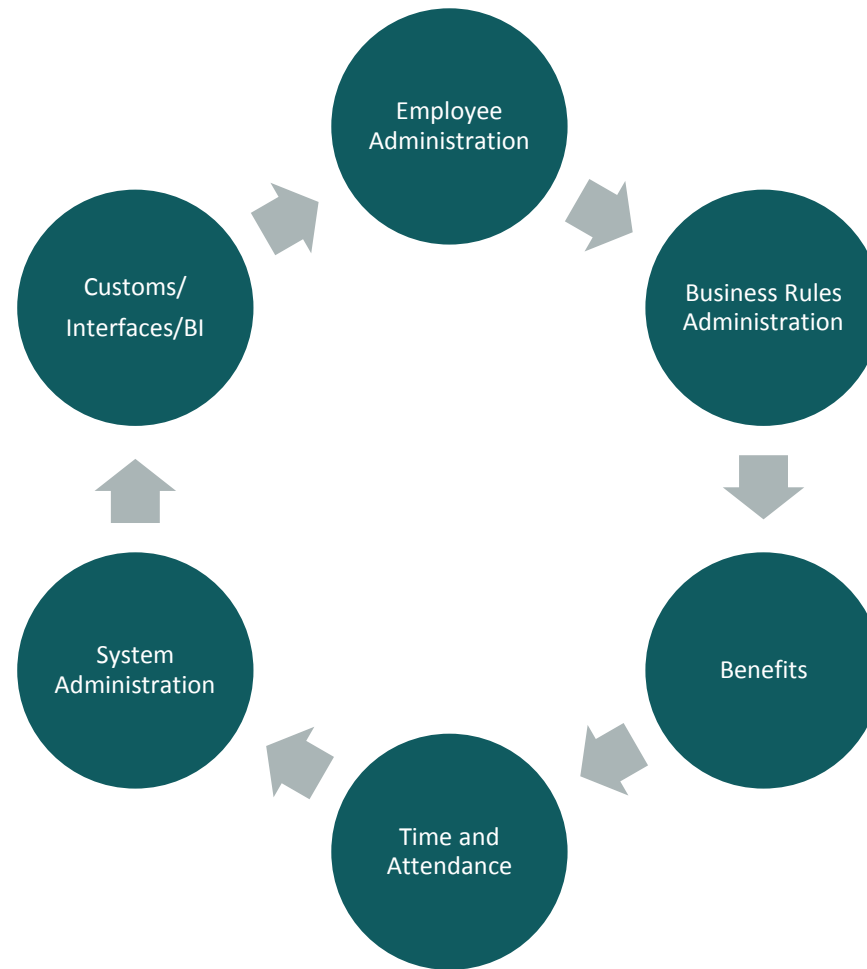
- Some states, such as California, don't allow the fluctuating workweek method
- Make sure you obtain legal counsel to devise a compliant plan

Poll Question 1

Which approach are you most likely to consider in complying with the new OT regulations?

- a) Increase employee pay to meet the new threshold
- b) Reclassify employees to nonexempt
- c) Limits overtime hour for impacted employees
- d) All of the above

Compliance Challenges: HCM Focus Areas

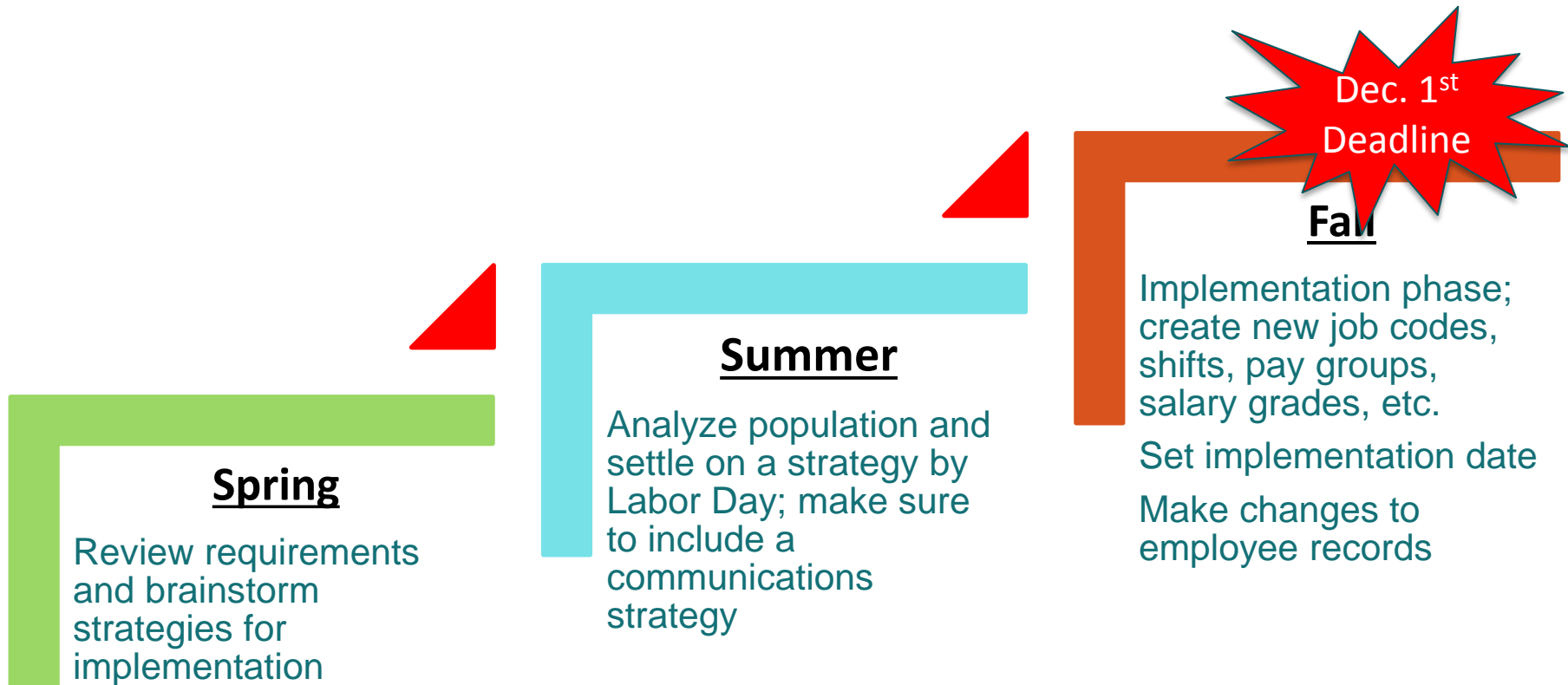


Compliance Challenges

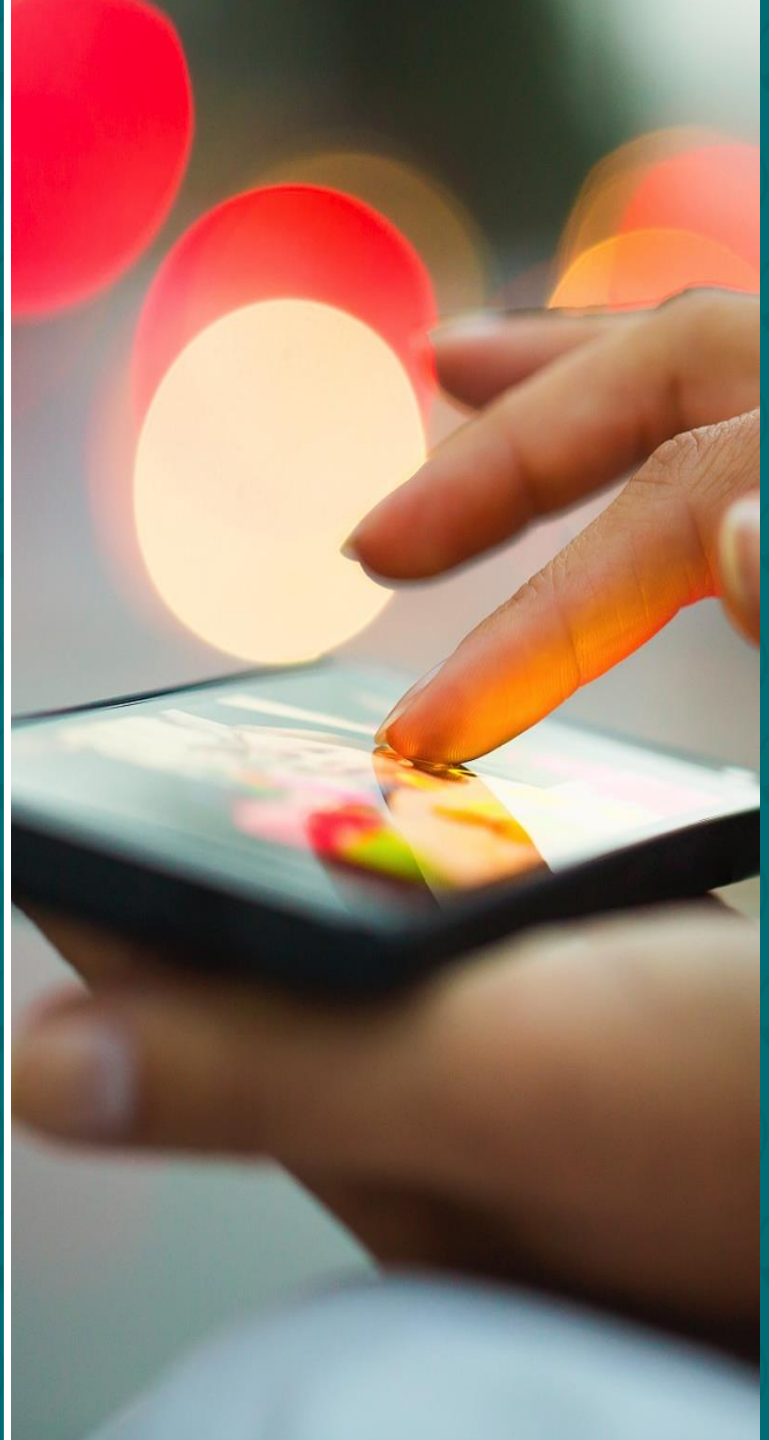
Some Issues to Consider:

- New Job Codes
- Vendor Feeds
- Customizations
- Benefit Plans (PTO, Life Insurance, Status Based Health Plans, Retirement Plans, etc.)
- Forms & Onboarding Paths
- Timekeeping
- Security/Permissions

From Now till Then



State Wage Notice Laws



State Wage Notice Laws

States with Requirements:

- New York Wage Theft Prevention Act
> effective 2011
- California Wage Theft Prevention Act
> effective 2012
- D.C. Wage Theft Prevention Amendment Act
> effective 2015

State Wage Notice Laws

Issuance of Notice

Requirement	NY	CA	D.C.
Must provide to non-exempt employees at hire			
Must provide to exempt employees at hire			
Must provide to union employees regardless of CBA /pay rate			
Must provide to government employees			
Must re-issue if <u>any</u> pay change, regardless of other notifications	*		

* Hospitality workers only

Timing:

NY- Within 10 days of employment

CA- Upon hire/First day of employment

D.C.- First day of employment

State Wage Notice Laws

Basic Information on Notice Form

Content	NY	CA	D.C.
Rate(s) of pay, including OT rate(s)			
Basis of pay e.g., hour, shift, day, week, salary, piece, commission			
Allowances			
Regular payday			
Name of employer, including any dba			
Employer address			
Employer phone number			

State Wage Notices

Basic Information on Notice Form

Content	NY	CA	D.C.
Name, address and phone number of worker's comp carrier			
Hire date and position			
Business form of employer (corporation, partnership, etc.)			
Other entities used to hire or administer wages or benefits, excluding recruiting and payroll services			
Whether an employment agreement exists providing rate of pay			
Workers' comp policy/certificate number			
Introductory paragraph and several concluding paragraphs describing the terms on which Wage Notices must be provided			

State Wage Notices

Basic Information on Notice Form*

Content	NY	CA	D.C.
Living wage/exemptions from living wage			
Applicable prevailing wage (for DC and federal gov't contractors)			
Exemptions from overtime pay			

Note:

Forms also include name, signature and date for employee and company representative

*Consult authoritative sources for details on requirements

State Wage Notices

Languages

Requirement	NY	CA	D.C.
English			
Spanish			
Chinese			
Haitian Creole			
Korean			
Polish			
Russian			
Vietnamese			
Tagalog			

State Wage Notice Laws

Monetary Penalties:

New York

- \$50/day for each employee notice
- Capped at \$5000 per employee

California

- Initial violation- \$100/pay period per employee
- Subsequent violation- \$200/pay period per employee

District of Columbia

- \$500 for each employee notice

State Wage Notice Laws

Potential Penalties:

New York

- \$50/day for each employee notice
- Capped at \$5000 per employee

California

- *Initial violation*- \$100/pay period per employee
- *Subsequent violation*- \$200/pay period per employee

District of Columbia

- \$500 for each employee notice

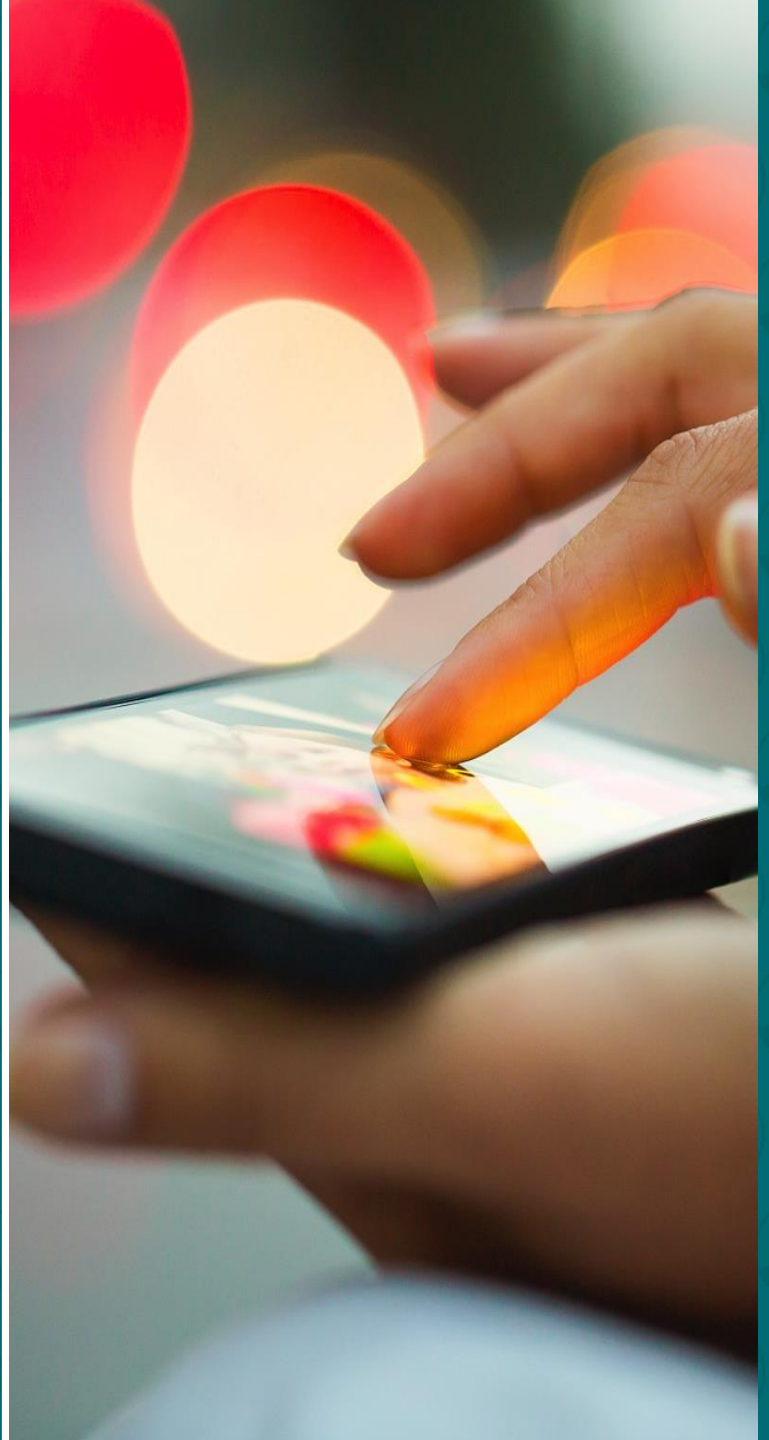
50 employees for 1 year

\$250,000

\$515,000

\$25,000

Paid Sick Leave Laws



Paid Leave Laws

States with Paid Leave Laws:

States	Sub-jurisdictions
California	√
Oregon	√
Massachusetts	
Connecticut	
District of Columbia	
Vermont (1-1-17)	

Paid Leave Laws

Cities with Paid Leave Laws:

California

Emeryville

Oakland

San Francisco

Oregon

Portland

Washington

Seattle

Tacoma

New Jersey

Bloomfield

East Orange

Elizabeth

Irvington

Jersey City

Montclair

Newark

Passaic

Paterson

Trenton

New York

New York City

Pennsylvania

Philadelphia

Minnesota

Minneapolis (1-1-17)

Paid Leave Laws

Cities Locals with Paid Leave Laws:

California

Emeryville

Oakland

San Francisco

Oregon

Portland

Washington

Seattle

Tacoma

New Jersey

Bloomfield

East Orange

Elizabeth

Irvington

Jersey City

Montclair

Newark

Passaic

Paterson

Trenton

New York

New York City

Pennsylvania

Philadelphia

Minnesota

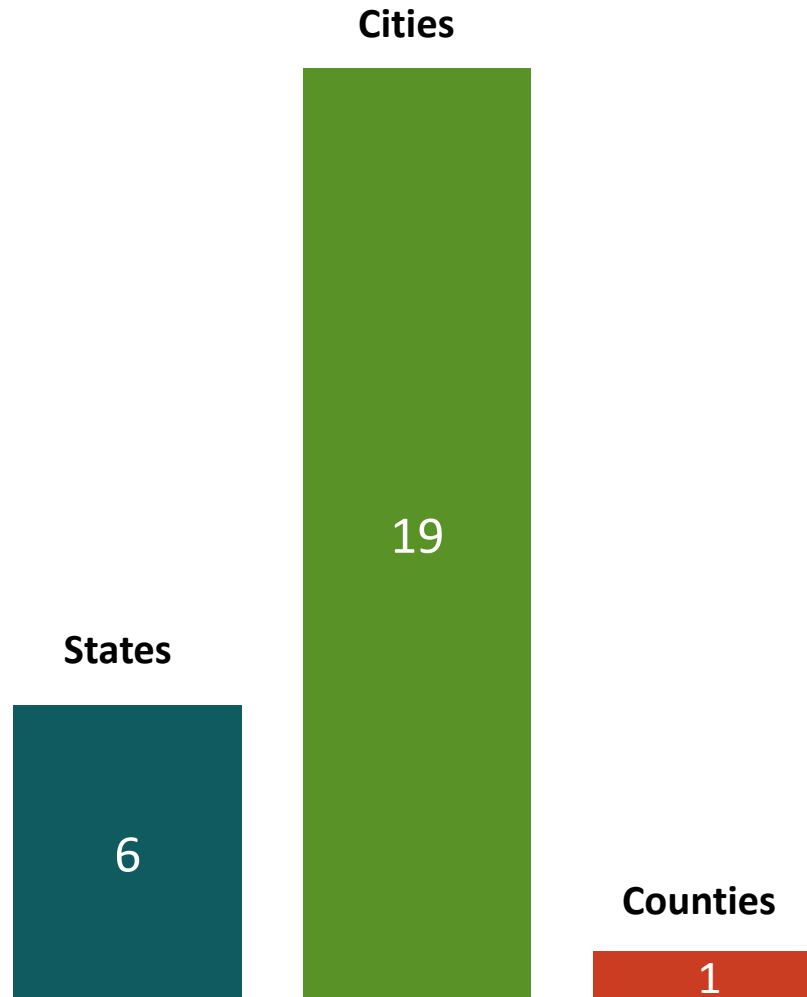
Minneapolis (1)

*Look at me,
I'm a county!*

Maryland

Montgomery County

Jurisdictions with Paid Leave Laws



Paid Leave Laws: Common Elements/Trends

- Accrual Rates
 - Trend: 1 hour for every 30 worked
- Accrual Limits
 - Trend: 40 hours per year
- Minimum Incremental Use Rules
 - Trend: 1 hour or less
- Carry Over Rules
 - Trend: Limit to 40 hours (but some unlimited)
- Payout Rules
 - Trend: Pay out at rate earned at time of use
- Rehire Rules
 - Trend: Reinstate unused time if rehired within 6 months
(12 months is also common)

Paid Leave Laws: New York City

New York - New York City

The following information provides a brief overview of paid sick time legislation.

New York City's Earned Sick Time Act

<http://www1.nyc.gov/site/dca/about/paid-sick-leave-law.page>

Effective Date	7/1/2015
Eligibility	Eligible when working more than 80 hours within a year in the locality. Part time and temporary employees are eligible. Keep employee records for three years.
Waiting Period	Begin using sick time 120 days after hire date.
Rehire	If rehired within six months, unused accrued sick time is reinstated.
Accrual	Accrue one hour for every 30 hours worked.
Plan Limits	Employers can require a maximum of 40 accrued per year. Employers can require the incremental use of four hours or less per request.
Carry Over	Carry over up to 40 hours per year.
Payout Rate	Payout sick time at the regular hourly rate at the time of the request. Tipped employees payout sick time at the minimum wage. Commissioned employees are paid out at the base wage or minimum wage.

Paid Leave Laws: Newark

New Jersey - Newark

The following information provides a brief overview of paid sick time legislation.

City of Newark Paid Leave Law

<http://www.ci.newark.nj.us/government/departments/health-and-community-wellness/>

Effective Date	5/28/2014
Eligibility	Eligible when working 80 or more hours within a year in the locality. Part time and temporary employees are eligible.
Waiting Period	Begin using sick time 90 days after hire date
Rehire	If rehired within six months, unused accrued sick time is reinstated.
Accrual	Accrue one hour for every 30 hours worked.
Plan Limits	Employers with less than 10 employees can require an accrual limit of 24 hours per year. Employers with 10 or more employees can require a maximum of 40 hours accrued per year. Employers can require the incremental use of one hour or less per request
Carry Over	Carry over up to 40 hours per year.
Payout Rate	Payout sick time at the regular hourly rate or minimum wage, whichever is greater.

Paid Leave Laws: Newark

New Jersey - Newark

The following information provides a brief overview of paid sick time legislation.

City of Newark Paid Leave Law

<http://www.ci.newark.nj.us/government/departments/health-and-community-wellness/>

Effective Date	5/28/2014
Eligibility	Eligible when working 80 or more hours within a year in the locality. Part time and temporary employees are eligible.
Waiting Period	Begin using sick time 90 days after hire date ←NYC=120 Days
Rehire	If rehired within six months, unused accrued sick time is reinstated.
Accrual	Accrue one hour for every 30 hours worked.
Plan Limits	Employers with less than 10 employees can require an accrual limit of 24 hours per year. Employers with 10 or more employees can require a maximum of 40 hours accrued per year. Employers can require the incremental use of one hour or less per request
Carry Over	Carry over up to 40 hours per year. ↑ NYC=allow max 40 hour accrued; min 4 hour incremental use
Payout Rate	Payout sick time at the regular hourly rate or minimum wage, whichever is greater.

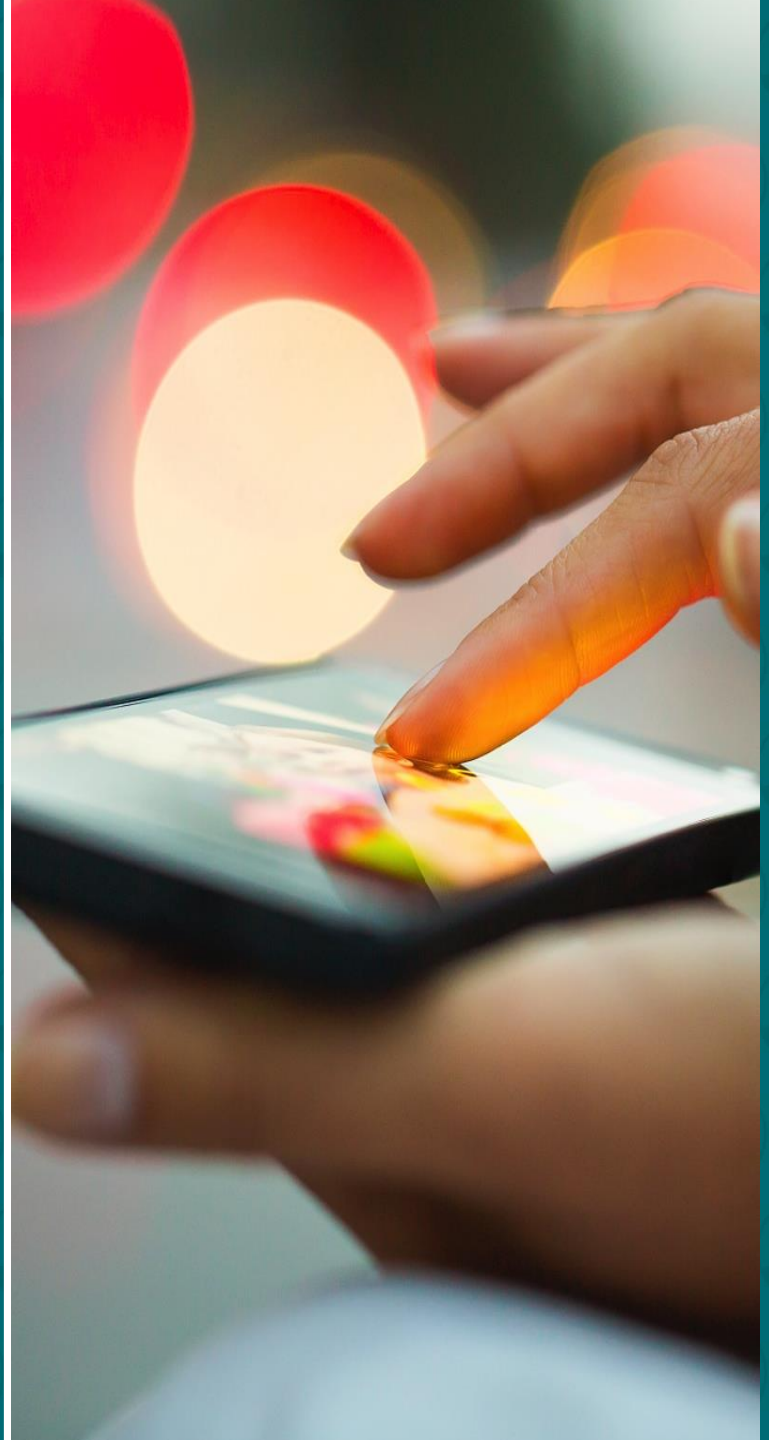
↑NYC=payout at regular hourly rate at time of request, tipped employees at min wage, commissioned employees at base or minimum wage

Compliance Challenges

Compliance Challenges:

- Workplace consistency
- Maintenance- new laws keep coming!
(Vermont, Minneapolis...)
- Complex issues
e.g., California requires 1 hour accrued for every 30 worked, but law permits employer to cap use at 24 hours per year

EEO-1 Changes




EEO-1 Current State

- The EEO-1 report is an annual report submitted to the EEOC.
- Purpose is to support civil rights enforcement and identify trends regarding the representation of female and minority workers within companies, industries or regions.
- If the employer is a federal contractor, the governing agency, OFCCP, also receives the EEO-1 report and uses the data determine which companies will be selected for compliance reviews.
- The EEOC strongly prefers submission of the report through the EEO-1 Online Filing System or as an electronically transmitted data file.

EEO-1 Current State

- Generally, all employers with at least 100 employees are required to file the EEO-1 report.
- If an employer is a federal contractor, the obligation to file an EEO-1 report is set at 50 employees with a government contract worth at least \$50,000.
- The Form is due by September 30 of each year.
- Currently, the data collected and reported on the report are gender, race, and ethnicity, reported by job category.
- This data is derived from any pay period of July-September.
- Each employee, regardless of full-time or part-time status, should be in only one job category.

EEO-1 Proposed Revisions



Anything you're
about to hear
could go up in
smoke!

New Regulations are
PROPOSED, Not finalized.

EEO-1 Proposed Revisions

- The proposed revisions will only affect employers with at least 100 employees and are slated to go into effect in 2017.
- The revised report will consist of two components.
- Component One remains unchanged; it will continue to collect information about employees' ethnicity, race, and sex, by job category. The seven race and ethnicity categories and the ten job categories also remain unchanged.
- Component Two will be the new component and will collect data on *employees' W-2 earnings* and *hours worked*.

EEO-1 Proposed Revisions

Summary of New Requirements

- W-2 EARNINGS: Must include 12 pay bands; employers must count and report the number of employees in each band.
- HOURS WORKED: Must collect total number of hours worked by employees in each pay band cell

EEO-1 Proposed Revisions

- W-2 EARNINGS: Must include 12 pay bands; employers must count and report the number of employees in each band.

- Pay data will begin to be reported in the 2017 survey year and will consist of the total W-2 earnings
- The EEOC does not anticipate any issues with collecting and reporting W-2 earnings prior to year-end (the EEO-1 report is due September 30). The EEOC suggests that payroll systems are able to generate reports at any given point in time, that the W-2 data can be imported into a HRIS, or that employers could obtain the pay information by utilizing quarterly payroll reports for the previous four quarters

EEO-1 Proposed Revisions

TABLE 2 PROPOSED EEO-1 PAY BANDS	
Pay Bands	Pay Bands Label
1	\$19,239 and under
2	\$19,240 - \$24,439
3	\$24,440 - \$30,679
4	\$30,680 - \$38,999
5	\$39,000 - \$49,919
6	\$49,920 - \$62,919
7	\$62,920 - \$80,079
8	\$80,080 - \$101,919
9	\$101,920 - \$128,959
10	\$128,960 - \$163,799
11	\$163,800 - \$207,999
12	\$208,000 and over

- The pay data will be organized into 12 pay bands for the 10 EEO-1 job categories.
- Employers will count and report the number of employees in each pay band.
- The EEOC will use these pay bands to compute within-job-category variation, across-job-category variation, and overall variation.

EEO-1 Proposed Revisions

- HOURS WORKED: Must collect total number of hours worked by employees in each pay band cell

- For full-time salaried employees, the EEOC proposed using an estimate of 40 hours per week
- The EEOC is not proposing an employer begin collecting additional data on actual hours worked for salaried employees, to the extent the employer does not currently collect that information

EEO-1 Proposed Revisions

EEOC's Analysis of the Revised Report:

- Statistical tests that do not rely on an assumption of normal distribution will be initially used.
- The EEOC and OFCCP plan to develop software that will analyze W-2 pay distribution within a single firm or establishment, and compare to aggregate industry or metropolitan area data.
- The software will inform the auditors of statistics of interest.

EEO-1 Proposed Revisions

Concerns about the Proposed Regulations:

- Statistical relevance of data
 - For example, one of the ten job categories is “Professional.” If the reporting employer is a hospital, the job category may include doctors, lawyers, and nurses, who could be paid greatly different salaries.

EEO-1 Proposed Revisions

Concerns about the Proposed Regulations:

- W-2 Earnings Definition
 - the proposed regulations' reference to “total W-2 wages” may provide confusion as to which amount to report, Box 1, Box 3 or Box 5 on the W-2.
 - Additionally, the proposed regulations were ambiguous as to whether employers should report W-2 wages from a 12 month look back period, which then crosses calendar years, or only from January through September 30 of the current reporting year.

EEO-1 Proposed Revisions

Concerns about the Proposed Regulations:

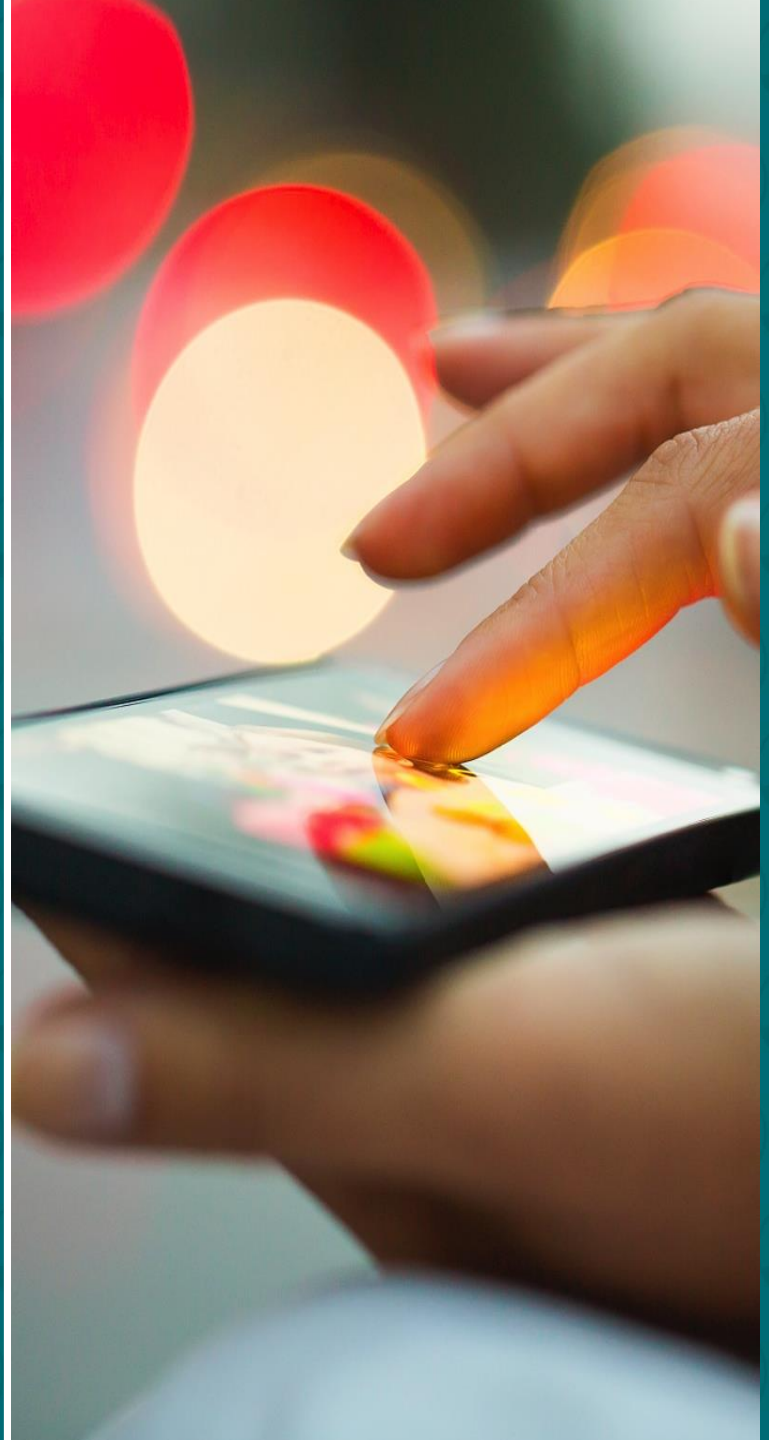
- Hours worked definition
 - NPRC suggested relying upon the calculations used under ACA as the hours worked calculation for the EEO-1 report.
 - What may complicate this substitution is that the EEOC's proposed regulations do not state whether paid time off ought to be included as part of hours worked.

EEO-1 Proposed Revisions

Concerns about the Proposed Regulations:

- Implementation Date
 - There has been much discussion about whether the EEOC and employers could be ready to report this new information by the September 30, 2017 proposed deadline.
 - The EEOC held a public hearing in March and it is being reported that the committee members were receptive to changing the due date of the form from September 30 to the end of January to coincide with W-2 reporting.

CEO Pay Ratio Rule



CEO Pay Disclosure Rule

Old Law	New Law
<ul style="list-style-type: none">▪ There is currently no law requiring companies to disclose the disparity between CEO pay and median worker pay.	<ul style="list-style-type: none">▪ The Dodd-Frank Act requires <u>public companies</u> to:<ol style="list-style-type: none">(1) identify their median employee's total compensation,(2) identify their CEO's total compensation,(3) calculate the ratio between the two and disclose this ratio and supporting information to the SEC.

CEO Pay Disclosure Rule

Old Law

- There is currently no law requiring companies to disclose the disparity between CEO pay and median worker pay.

The first applicable reporting period covers a company's fiscal year beginning on January 1, 2017. The first SEC filings are expected in 2018.

New Law

- The Dodd-Frank Act requires **public companies** to:
 - (1) identify their median employee's total compensation,
 - (2) identify their CEO's total compensation,
 - (3) calculate the ratio between the two and disclose this ratio and supporting information to the SEC.

CEO Pay Disclosure Rule

Employees Covered

- “Employee” = an individual employed by the company or its consolidated subsidiaries as of any date (determined by the company) within the last 3 months of the company’s last completed fiscal year.
- In addition to regular US employees, the term includes:
 - Employees based outside of the US (but exemptions exist)
 - Part-time employees
 - Temporary employees
 - Seasonal employees
- Does not include workers employed by an unaffiliated third party (independent contractors or leased employees)

CEO Pay Disclosure Rule

Privacy Exemption for Foreign Employees

- Companies can exclude employees in foreign jurisdictions in which privacy laws or regulations impede reasonable efforts to obtain necessary information
 - Company must, at a minimum, use or seek any available exemptions
- Disclosure document must:
 - List the excluded jurisdictions
 - Provide approximate number of employees excluded
 - Explain how compliance with the Pay Ratio Rule would violate privacy law
 - Describe efforts to obtain an exemption
- Must obtain a legal opinion to back up the company's position

CEO Pay Disclosure Rule

De Minimus Exemption for Foreign Employees

- Companies can exclude foreign employees that account for 5% or less of their total employees
- Where foreign employees exceed 5% of workforce, company can exclude up to 5% of foreign employees from the determination
 - If company excludes any employees from a jurisdiction, it must exclude all of them from that jurisdiction
 - Employees excluded due to the privacy exemption count towards the 5% limit
- Company must explain the details of how it applied the de minimus exemption

CEO Pay Disclosure Rule

Identifying the Median Employee

- Companies have flexibility in selecting a method
- May use any consistently used compensation measure
 - E.g., amounts reported in company tax and/or payroll records
- Company can identify the median based on total compensation regarding their full employee population OR may use a statistical sample/other reasonable method
 - According to the SEC. “Since identifying the median involves finding the employee in the middle, it may not be necessary to determine the exact compensation amounts for every employee paid more or less than the employee in the middle.”
 - The median employee must be an actual, individual employee, however this person should not be identified.

CEO Pay Disclosure Rule

Identifying the Median Employee

- The company can choose any date during the last 3 months of the fiscal year to identify the median employee.
- The company only needs to identify the median employee once every 3 years so long as there have been no business changes that would significantly change the pay ratio.
- If the median employee leaves the company, another employee with similar compensation can be substituted

CEO Pay Disclosure Rule

Calculating Compensation

- Can use reasonable estimates.
- Can annualize pay for permanent employees who did not work the whole year
- Cannot annualize pay for temporary or seasonal employees.
- Cannot use full-time-equivalent adjustments
 - May derive and disclose an additional ratio using FTE's
- Can use a cost-of-living adjustment
 - If median employee resides in a different jurisdiction than the CEO, must use same cost-of-living adjustment in calculating their annual total compensation
 - Must disclose the median employee's jurisdiction
 - Must describe adjustments
 - Must still disclose median employee's total comp without adjustment

CEO Pay Disclosure Rule

Calculating Compensation

- Permitted, but not required, to include personal benefits that aggregate less than \$10,000 as well as compensation under non-discriminatory benefit plans.
 - Must be consistent in calculating CEO pay
 - Must explain any differences between CEO total comp and median employee total comp

CEO Pay Disclosure Rule

Disclosure Elements

- Can express the ratio numerically (e.g., “30 to 1”) or narratively (e.g., the total annual compensation of the CEO is 30 times that of the median of annual compensation of all other employees”)
- Must provide a summary of methodology
- May supplement disclosure with additional disclosures/information so long as it is not misleading and is not more prominent than the required ratio

CEO Pay Disclosure Rule

Compliance Challenges

- Understand and account for all compensation programs
- Determine whether employees outside of the US must be included (privacy and/or de minimus foreign exemptions)
- Determine whether to use statistical sampling or gather complete pay data
- Determine whether to use cost-of-living adjustments
 - Is it worth it, since the unadjusted number must also be provided?
- Develop process for identifying change in median employee

