



Small Business Bulletin

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The Impact of AI on Small Businesses

Artificial intelligence (AI) has made its way into many workplaces nationwide and is rapidly changing how organizations operate and make decisions. In some cases, employees may be using AI tools without their employers' permission or knowledge. This technology presents opportunities for organizations, including enhanced workflows, streamlined operations and improved customer experiences, but it also introduces certain challenges for small businesses. In fact, many small businesses are trying to understand how this technology impacts their organizations.

This article outlines small businesses' concerns with AI and strategies to mitigate related risks.

Small Businesses' AI-related Concerns

Almost three-quarters (73%) of U.S. small business owners are concerned that AI development and adoption are outpacing government regulation, according to a recent survey from global small business platform Xero. When it comes to AI, small business owners are most concerned about sensitive information disclosure (38%), data privacy violations (36%) and worker displacement (35%).

Among small business owners who have implemented this technology, 16% saw an increase in biases or inaccuracies in content, 16% experienced a decrease in employee morale, 15% had a decrease in efficiency and 15% have started experiencing headcount reductions.

With more limited resources compared to larger organizations, small businesses have less time and resources to dedicate to understanding and staying current on AI tools. Despite this, small business owners understand that they will likely need to

leverage this technology at some point. According to the Xero survey, 37% of small businesses have started experimenting with AI, 25% have started investing in this technology, and 19% have started working with third-party AI vendors and experts. Only 30% of small businesses have not taken any steps at all.

Strategies for Small Businesses to Reduce Risks

Even though an overwhelming majority of small businesses want more AI-related regulation, nearly half trust this technology with identifiable customer information and 41% with their own sensitive commercial information. Therefore, now is the time for small businesses to start considering how best to create and enforce policies that address the use of AI in the workplace.

To mitigate potential liability and reduce risks with AI use, small businesses can implement the following strategies:

- Comply with applicable laws and regulations.
- Develop clear ethical guidelines.
- Ensure data quality to minimize bias.
- Implement human oversight and intervention.
- Audit and evaluate AI performance regularly to address emerging risks.

Employer Takeaways

AI technology is revolutionizing the employment landscape. As more small businesses embrace this technology, being proactive and establishing proper workplace policies can help them protect against related risks.

Preparing for the DOL's Proposed FLSA Overtime Rule

On Aug. 30, 2023, the U.S. Department of Labor (DOL) [announced](#) a proposed rule to amend current requirements that executive, administrative and professional employees (EAPs) must satisfy to be exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements. The agency's new overtime rule could significantly affect small businesses' operational and compliance costs and increase their litigation risks, so it's critical that small businesses understand the new rule and its potential impacts on their organizations. The proposal does not impose any new requirements on employers at this time; still, small businesses should familiarize themselves with the rule, evaluate what changes they may need to adopt if the rule becomes final and formalize a plan prior to its implementation.

This article provides an overview of the proposed overtime rule, highlights potential changes the new rule could bring and outlines preparations for small businesses.

FLSA's White-collar Exemptions

Under the FLSA, covered employers must pay employees at least the federal minimum wage for all hours worked and overtime pay for all hours worked over 40 in a workweek. However, the FLSA provides several exemptions from minimum wage and overtime pay requirements. The most common are "white-collar" exemptions. These exemptions mainly apply to EAPs but include outside sales personnel and certain computer and highly compensated employees (HCEs). To qualify for a white-collar exemption, an employee must satisfy the following tests:

- The **salary basis test** ensures the employee is paid a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work.
- The **salary level test** confirms that the employee meets a minimum specified amount to qualify for the exemption. The current salary threshold is \$684 per week (\$35,568 per year) for EAPs and \$107,432 per year for HCEs.
- The **duties test** requires that the employee's job duties conform to EAP duties. To satisfy the

duties test, an employee's actual work responsibilities must match the description the FLSA assigns to the exemption.

Proposed FLSA Overtime Rule

The proposed rule doesn't impact the duties test for the white-collar FLSA exemptions. The DOL is proposing to increase the standard salary level from:

- \$684 to \$1,059 per week (\$35,568 to \$55,068 per year)
- \$107,432 to \$143,988 per year for HCEs

The rule would enable the DOL to update salary levels automatically every three years without having to rely on the rulemaking process. With this substantial increase, nearly 3.6 million more workers will likely qualify for overtime protections. However, significant changes to the salary threshold will likely result in legal challenges to the DOL's new overtime rule, which could delay the implementation of any rule changes.

Preparing for the New Overtime Rule

While the proposal doesn't impose any new requirements on employers at this time, organizations should become familiar with the FLSA's proposed rule and evaluate what changes they may need to adopt if the rule is implemented as proposed. These may include determining whether to increase employees' salaries to maintain their exempt classification or reclassify exempt employees to nonexempt status and pay them overtime for all hours worked over 40 in a workweek, as well as auditing exempt employees' job duties. However, small businesses should proceed with caution before implementing any changes and will likely need to prepare for uncertainty.

Employer Takeaways

If the DOL's overtime rule becomes final, it will significantly impact most employers. Employers might use this proposed rule as an opportunity to revisit their exemption determinations more broadly. Understanding the FLSA's proposed overtime rule and its potential impacts allows employers to prepare, adapt and set their organizations up for long-term success.

Reach out to us for more workplace resources.