Johnson County Affiliates Meeting
Agenda

11/10/16
1:00-2:00 PM
KU Edwards Campus
Regnier Hall Room #255
12610 Quivira Road
(West side of the Regents Center)
Overland Park, KS 66213

Introductions & Member Updates

- Arcare provided handouts for their event on 11.12.16 on Life Planning Stages- Special Needs Mini-Resource Fair & Education at Tomahawk Ridge Community Center, O.P.

Provider of the Month Award – The CDDO recognized the providers who assisted with the transition of services from Cornerstone Supports with special thanks to those who are now providing residential supports the 15 individuals affected by the closure: VIP (1), Kansas Focus (1), The Sweet Life (1), Honeybee (3), Options (3), JCDS (6).

Guest Presenter

Department of Labor Final Rule – Wage & Hour Training for I/DD Providers on meeting requirements of the Overtime Exemption Rule that goes into effect on 12/1/16 by Kyle B. Russell, Attorney at Law, Jackson Lewis, P.C.

Please see attached power point.

CDDO Updates

- Johnson County Affiliates Meeting (monthly)
  o 12.8.16 – Overview of Johnson County Mental Health, Community Behavioral Health Team (JCDS/JCMH Collaborative), Lake Mary Center Outpatient Therapy and other behavioral/mental health supports (?) If you offer or know someone that offers community behavioral/mental health supports, please have them contact Shelly May at the CDDO to be featured at next month’s meeting.
  o 1.12.17 (Continue schedule of every 2nd Tuesday of the month from 1-2 pm in 2017 – all affiliates are welcomed and encouraged to attend)

- Sheri Kendall’s role on the CDDO team has been redefined and will focus on capacity building within the affiliate network. She’ll be providing training and support to affiliates and working closer with affiliates and having regular dialogue on current capacity and expansion needs.

- CDDO/KDADS Quarterly Calls hosted at JCDS Elmore Center, 9:30 AM to Noon
  o January 19, 2017
  o April 20, 2017
State Updates/Workgroups/Policies

- Capable Person Policy
  Policy has been rescinded by KDADS and MCO’s were notified to halt practices using this policy to determine number of units on ISP’s and revert back to using original waiver language when determining the number of units:

Personal Care Services:
It is the expectation that program participants who need assistance with instrumental activities of daily living (IADL) tasks receive those supports from informal supports, if available. These informal supports may include relatives or friends that live with the person receiving HCBS services. These informal supports should not be replaced by formal supports for the purpose of accessing services. Participants, who live with persons capable of performing these tasks, should rely on these informal/natural supports for IADL assistance unless there are extenuating or specific circumstances that have been documented in the plan of care.
In accordance with this expectation, a participant who has access to the informal supports of a capable person will not be allotted PCS for instrumental activities of daily living (IADL) tasks on their plan of care. Specifically, no time will be allowed on the Plan of Care for PCS to complete activities that can be provided by the capable person as this is a task that can be completed in conjunction with the housekeeping/laundry done by the individual with whom the participant lives with and would normally complete the (IADL) task for themself/themselves. These tasks includes, but limited to the following:

  . Lawn care
  . Snow removal
  . Shopping
  . Ordinary housekeeping or laundry
  . Meal preparation

as these tasks can be completed in conjunction with activities done by the capable person.

Exceptions:
If a capable person refuses to or is unable to provide informal support for instrumental activities for daily living, the refusal or inability to perform the task(s) must be documented in writing and signed by the Capable Person. The capable person will not be reimbursed to perform these services, but the individual may have the services allocated on their plan of care and provided by an agency-directed service or through a new PCS provider, who is not a capable person for the participant.

PCS may be reimbursed for preparation of a specialized diet that is
medically prescribed and requiring specialized preparation or designed specifically for the participant's dietary needs as assessed by the MCO and identified on the integrated service plan/plan of care.

**Enhanced Care Services:**
ECS cannot be provided by a Participant's legally responsible person (spouse or parent of a minor child) or any individual residing in the home with the participant. Allowance may be authorized under extenuating circumstances as indicated below:

1. **Participant lives in a rural area, in which access to a provider is beyond a 50 mile radius from the participant's residence, and the relative or family member is the only provider available to meet the needs of the participant.**

2. **Participant lives alone and has a severe cognitive impairment, physical disability, or intellectual disability.**

3. **The participant has exhausted other support options offered by the MCO, and absent ECS would be at significant risk of institutionalization.**

If additional support is required, exceptions to the Personal Care Services (benefit limit) may be used to assure needed coverage up to 24 hours.

It has been brought to the attention of the CDDO that care coordinators are not going back and correcting plans that may have been determined using the previous Capable Person policy. Individuals should be able to request a redetermination of units which should be easier than going through an appeal process. However, be watchful of appeal timelines so the individual doesn’t miss that opportunity. It appears that some care coordinators may not be willing to make adjustments.

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**Next Johnson County Affiliates Meeting – December 8, 2016**
KU Edwards Campus
Regnier Hall Room #255
DOL Final Rule Amending White Collar Exemptions—What Employers Need to Know

Kyle Russell
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What We Will Cover Today

- What are the changes imposed by the Final Rule?
- When are the changes effective—i.e., how long do employers have to comply?
- What efforts are being made to block the changes?
- What options do employers have to ensure compliance with the Final Rule?
Requires payment of minimum wage and overtime.
  • Subject to exemptions.

Goals of FLSA:
  • Reduce unemployment.
  • Provide “Fair days pay’s for a fair day’s work.”
  • Reduce overwork and detrimental effect on health and well-being.
White Collar Exemptions

- **Salary basis test:**
  - Employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed.

- **Salary level test:**
  - The amount of salary paid must meet a minimum specified in the regulations.

- **Duties test:**
  - Primary duties must involve executive, administrative, or professional duties, as defined in regulations.
The Road to the Final Rule

- March 13, 2014 Presidential Memorandum
- July 6, 2015 Proposed Rule (NPRM)
- September 4, 2015 deadline for public comments
- May 23, 2016 Final Rule Published in Federal Register
Change #1: Standard Salary Level Increases

$47,476
[$913 per week]

$23,660
[$455 per week]
Change #2: HCE Threshold Will Increase

$134,004

[$2,577 per week]

$100,000

[$1,923.07 per week]
Stated Rationale for Increases

- Current standard salary level below the poverty line for family of four.
- Simplify the exemptions by allowing employers to more easily identify employees who perform exempt work.
  - Less litigation.
Change #3: Salary Level Will Increase Automatically Every Three Years

- Next Increase: January 1, 2020
  - DOL Estimates: $51,168 for standard salary and $147,524 for HCE
- DOL will announce increases 150 days prior [Early August 2019]
Change #4: Employers permitted to use incentive compensation to partially meet salary level requirement

Salary + Incentive Comp = $47,476

Incentive Compensation Limit: 10%  
[$42,728.40; 821.70 per week required]

Incentive Compensation:
- Commissions
- Non-discretionary Bonuses
- Other Incentive Payments
Use of Incentive Compensation to Satisfy Salary Level

- 10% Rule applied on a Quarterly Basis (or more frequent, such as monthly).
- DOL will permit “catch-up” payments if incentive compensation too low.
  - Must be paid within the next pay period.
- 10% Rule **Does Not** apply to HCE.
  - HCEs must be paid full standard salary level without regard to incentive compensation.
No Changes to Duties Test
The Final Rule does not affect other exemptions!
- No Change to Outside Sales Exemption—[no salary requirement]
- Does not affect professional exemption as it relates to teachers, doctors, and lawyers [no salary requirement]

Non-exempt employees are not required to be paid hourly and can be paid a salary (just requires overtime pay if work more than 40 hours in a week).
Misconceptions

- Does not change rules relating to payment of non-exempt employees.
- Does not require changes in pay to employees who do not work overtime—i.e., part time employees.
- Final Rule Applies to Puerto Rico.
- Final Rule Applies to Higher Education Employers.
Impact on Non-Profit Organizations

- No new exemptions or concessions for non-profits.
- Commenters requested clarification as to how the FLSA applies to non-profits.
- Additional guidance provided as to the FLSA’s current requirements for non-profits.
Impact on Non-Profit Organizations

- Enterprise Coverage
  - All employees covered by the FLSA.
  - Annual revenues of $500,000.
  - Non-profits with ordinary commercial activities producing revenue of at least $500,000.
    - Thrift store, gift shop
  - Contributions, membership fees, etc. do not count against the $500,000.
Impact on Non-Profit Organizations

- “Named Enterprises”
  - Hospitals
  - Higher education institutions
  - Most schools
  - Institutions engaged in the care of the elderly or disabled, who reside on the premises
Impact on Non-Profit Organizations

Individual Coverage

- Regularly engages in interstate commerce or the production of goods for interstate commerce.
  - Making out-of-state phone calls.
  - Receiving/sending interstate mail or email.
  - Ordering/receiving goods from an out-of-state supplier.
  - Handling credit card transactions.
Volunteers

- Rules are unchanged.
- Must volunteer freely for public service, religious, or humanitarian objectives.
- Should not perform work that would otherwise be performed by employees.
- Employees may not volunteer in commercial activities run by a non-profit.
Non-Enforcement Period for Certain Providers of Medicaid-funded Services

- Applies only to providers of Medicaid-funded services for individuals with intellectual or developmental disabilities in: (1) residential homes; or (2) facilities with 15 or fewer beds.
- DOL will not bring enforcement actions, based on the updated salary threshold, through March 17, 2019.
- Protection from civil lawsuits?
When Is the Final Rule Effective?

December 1, 2016
Can It Be Stopped?

- Lawsuit filed by 21 states
- Not likely to prevent final rule from taking effect
- *Might* get the provision for automatic increases invalidated
- PREPARE TO COMPLY as of December 1
Strategies for Responding to Changes

Identify employees who no longer meet the salary level test.
Option 1: Increase salary level for affected employees and retain exempt status (assuming employees satisfy duties test).
Strategies for Responding to Changes

- But will employers just absorb the additional cost?
  - Reduce variable compensation;
  - Reduce fringe benefits;
  - Reduce pay for non-exempt employees or provide slower and smaller wage increases to non-exempts;
  - Delay promotions.
- May impact other exempt employees above the salary level—global adjustment?
Option 2: Reclassify as non-exempt and overtime eligible and pay overtime.

Option 2.1: Reclassify as non-exempt and...
  - Adjust hourly rate to account for anticipated overtime so reclassification is cost neutral (e.g. $800 week = $14.54 hr. @ 50 hrs. a week; don’t set rate by dividing current salary by 40--$20 per hour).

Option 2.2: Reclassify and use fluctuating workweek method of pay (where allowed by state law).
Option 3: Reduce hours to avoid overtime and shift work to other workers.

Option 4: Hire more part-time workers.
  • Take 60 hour job and make it two 30 hour jobs without overtime.
Challenges:

- Recording time (particularly work outside the office using electronic devices).
- Loss of flexibility.
- Loss of steady income—wages will fluctuate.
Strategies for Responding to Changes

- Challenges:
  - Employee morale (punching hours; demotion).
  - Overtime estimates not reliable because no past history.
  - Potential for significant increase in costs.
  - May require hiring of more workers—additional cost.
Does the Change Provide Employer Opportunities?

Excellent time to conduct wage/hour audit.
Due to differences in salary levels, the Final Rule might result in some employees who hold the same job title treated differently---one exempt and one non-exempt. Is that ok?
What is the best way to communicate the decision to reclassify employees as non-exempt?
Questions

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