

# Top Regulatory Items of 2016



## ✓ Overtime Regulations

In 2016, the U.S. Department of Labor (DOL) is expected to release their final rule revising the federal overtime regulations. A Notice of Proposed Rulemaking was released in July 2015, proposing **revised salary thresholds** for the Executive, Professional, and Administrative white collar exemptions from overtime protections. The DOL also proposed changes to the salary threshold for the Highly Compensated Employee exemption and annual indexing of the applicable salary thresholds. After receiving close to 300,000 comments during the 60-day public comment period, the agency is expected to release the final rule as early as **spring 2016**, creating an immediate need for employers to take action to prepare for compliance.

## ✓ Affordable Care Act

The IRS extended the Affordable Care Act (ACA) reporting deadlines for the 2015 tax year to give businesses more time to meet the requirements. The deadline extension impacts certain forms mandated under the ACA, notably Forms **1094-C and 1095-C**. The new deadlines are:

- **March 31, 2016**, to furnish the 2015 Forms 1095-C to applicable employees;
- **May 31, 2016**, to manually file the 2015 Forms 1094-C and 1095-C with the IRS—for employers who're eligible for paper filing; and
- **June 30, 2016**, to electronically file the 2015 Forms 1094-C and 1095-C with the IRS.

Applicable large employers (in general, employers with 50 or more full-time employees, including full-time equivalents, in the previous calendar year) who fail to file Forms 1094-C and

1095-C and/or provide 1095-C informational returns to employees may be subject to penalties for failure to file correct information returns and/or failure to furnish correct statements, similar to the penalties for not filing/furnishing Forms W-2.

## ✓ Employee Pay

Across the country many employers will be adjusting pay practices in 2016 to accommodate minimum wage increases, equal pay laws, and paid sick time laws, and complying with mandatory notice and recordkeeping requirements. **For more information, visit [dol.gov/whd/state/state.htm](http://dol.gov/whd/state/state.htm).**

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## ✓ Worker Classification

The very active DOL enforcement initiative with regard to worker misclassification continues, while changes in the economy, such as the rise of companies like Uber and Airbnb, present even **greater challenges for employers attempting to accurately classify workers**. Employers need to examine third-party relationships and monitor state and federal agency developments to assist in their efforts to appropriately classify workers. **For more information, visit [dol.gov/whd/workers/Misclassification/AI-2015\\_1.pdf](http://dol.gov/whd/workers/Misclassification/AI-2015_1.pdf).**

## ✓ Privacy

With the continued focus on safeguarding sensitive data, many businesses will be obligated to comply with **more demanding privacy and security laws and regulations**. Many states have either recently enacted or are considering a wide array of requirements. These include the minimum necessary levels of encryption and security controls, as well as establishing stricter notification processes and remediation steps when a data breach occurs. Businesses should implement and maintain an information security program with privacy and security measures appropriate to their organization and in compliance with state, federal, and, as applicable, international mandates. **For more information, visit [nsl.org/research/telecommunications-and-information-technology/overview-security-breaches.aspx](http://nsl.org/research/telecommunications-and-information-technology/overview-security-breaches.aspx).**

## ✓ Earlier Annual Reconciliation and W-2 Employer Deadlines to Combat Fraud

For tax year 2016, employers will need to file Forms W-2 to the federal government on **January 31, 2017**. Currently, there is a gap between the time employees receive their W-2 forms (by January 31) and the date at which employers must file these forms with states — either at the end of February or March, if filed electronically. Historically, employees are issued

refunds before their tax returns are matched to third-party information, such as W-2 data. 11 states, along with Washington, DC, and Puerto Rico, currently require employers to file both annual reconciliations and W-2 forms by January 31 each year. While more states are considering this accelerated due date, the federal government did not adopt the earlier filing requirement for tax year 2015 W-2 forms, due in 2016. However, as noted above, **this will change for tax year 2016**.

## ✓ Retirement

The final version of the DOL's long-awaited fiduciary standard is expected to be released mid-year. This may impact the availability of plan advisors and result in more scrutiny of a **business' selection and ongoing monitoring of its retirement service providers**. Recent DOL guidance on state-based retirement initiatives has made it easier for states to launch such programs. A few states may mandate that employers not providing a 401(k) or similar retirement plan have their employees participate in a state "auto-IRA" type plan. **For more information, visit [dol.gov/ebsa](http://dol.gov/ebsa).**

## ✓ Online Sales Tax

Currently, states are limited by federal rules and case law to only collect tax made on online purchases when the seller has sufficient physical presence in the state. To level the playing field between brick and mortar retailers and online merchants, many have **pressed for passage of legislation which would allow states to collect tax**, regardless of where the seller resides. This may gain momentum in 2016 due to recent changes in congressional leadership. **For more information, visit [marketplacefairness.org/](http://marketplacefairness.org/).**

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