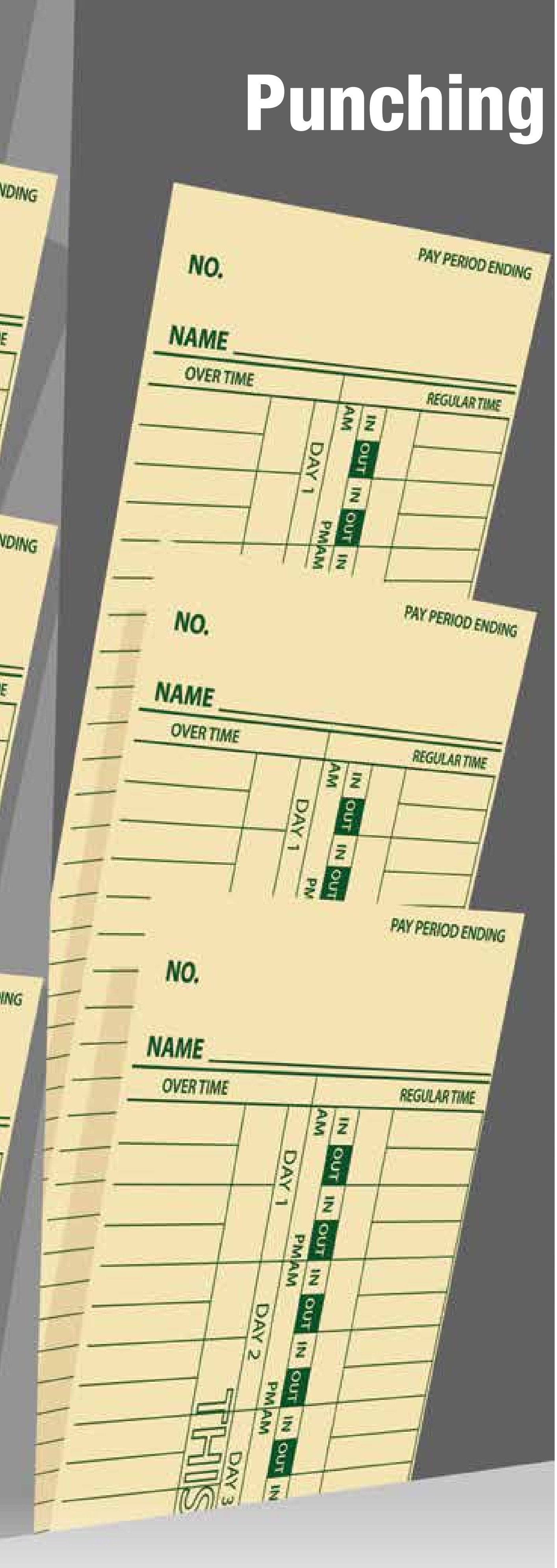

Punching the Clock

New overtime rules prompt operators to consider employee classification, hours worked.

By Laura Williams-Tracy

Overtime pay could be coming for thousands of self storage employees as new rules governing which workers are entitled to time-and-a-half are set to soon take effect. The change means it's a good time for operators to review how workers are classified and ensure they aren't vulnerable to an expensive claim from a disgruntled worker.

The U.S. Department of Labor has proposed updating the regulations governing which white collar employees are entitled to the Fair Labor Standards Act's (FLSA's) minimum wage and overtime pay protections to raise the salary threshold for overtime pay. Currently, federal rules dictate that an employer must offer overtime pay to workers who earn salaries less than $23,660, which equals $455 a week. That salary threshold has been raised only once in the last 40 years and is not tied to inflation.

Under the proposed new rules, the threshold would double to $50,440 per year, or $984 per week. Workers earning less than that will be entitled to time-and-one-half overtime pay regardless of how their employers characterize their job duties. It's estimated that the new threshold means five million additional workers will be covered by the FLSA's overtime protections.

For storage operators, the new rules could increase the number of office workers entitled to receive overtime pay, prompt changes in who is tracking their working hours or even prompt hiring more employees to avoid paying overtime.

"It's getting harder and harder to not pay people overtime," said Steve Dunn, employment lawyer with Van Hoy, Reutlinger, Adams and Dunn in Charlotte, North Carolina. "I do think this is going to be disruptive. These are people who are not used to punching a clock."

There are exemptions under the overtime rules for executives or administrators, but many storage operators who have reviewed the exemptions have concluded that the administrative exemption—which requires a manager to oversee at least two employees and have hiring and firing authority—doesn't apply to their business model. Only the largest stores have enough employees for a manager to supervise more than two. Under the new rules, managers and assistant managers earning less than $50,440 will have to be paid overtime for more than 40 hours a week.

Hourly Rates

Rules governing overtime are complicated. Many storage owners and third-party operators say the easiest way to stay in compliance is to pay store-level employees an hourly rate.

"The toughest thing is having to keep track of time for people who historically didn't track their time," said Chris Kirwan,

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director of development for Acorn Mini Storage, which has 10 locations in the Twin Cities of Minnesota. For Acorn Mini Storage and many other operators, that task is made easier with online time cards.

"It used to be that 80 percent of the self storage industry paid their managers on a salary," said Brenda Scarborough of the William Warren Group. She thinks that number is now closer to 20 percent of the industry.

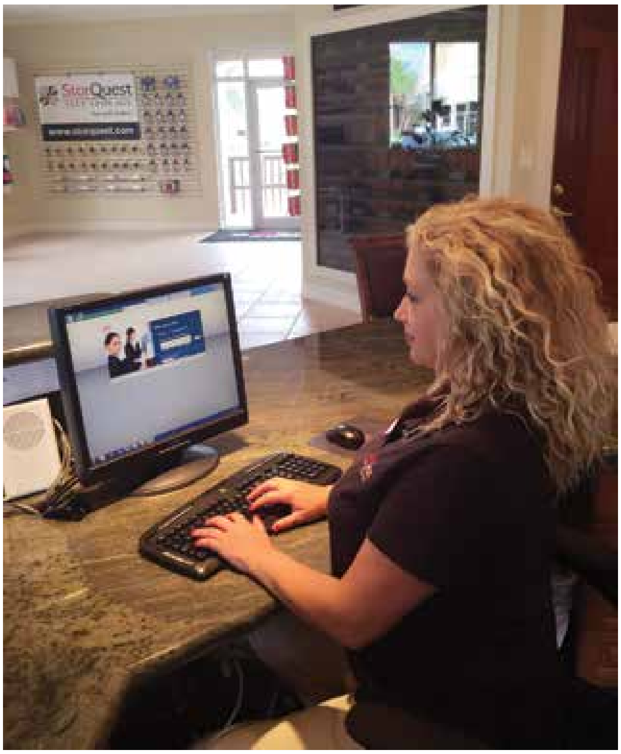
To stay in compliance, employees who were once salaried moved to hourly pay, a transition that came with some reluctance as some managers felt it was a loss of prestige and most everyone found tracking hours to be an onerous task, Scarborough says.

Along with tracking hours closely, the rules have other impacts on self storage operations.

"Good managers often want to come to work early, and they are reluctant to lock the door and hang an out-to-lunch sign each day," said Ken Nitzberg, chairman and CEO of Devon Self Storage. "We make an aggressive point that they need to lock up and put a sign on the door. It's less expensive to lose one tenant than to pay the penalties of not paying overtime."

Other owners make overtime part of their regular schedule, especially for small stores where only one employee is on staff at a time.

"We have some locations where there's one person, and we pay them to be there from morning to night, a 9- to 10-hour day," said Gary Braun, president of America West Management in Goleta, California, which manages 31 facilities with ownership of 11. "That's part of it and you just pay it."



Kristen Bergdorf, assistant manager of Storquest's Sarasota location, records her work hours.

Devon Self Storage uses a PEO, or professional employment organization, to manage payroll for its 150 employees in 18 states. The PEO keeps up with the variety of state rules that overlap with federal regulations. In California, for example, the standard for paying overtime is already higher, and employees there must have a salary of $37,440 to be exempt from receiving overtime pay.

To control costs, owners say they're diligent about controlling overtime, and they ask employees to get prior approval for anticipated overtime. Those that work longer hours at the beginning of a pay period are encouraged to take that time off during the week. Others say they are glad to pay overtime to a store employee who works an extra hour on a Friday evening renting to a new tenant.

Trying to avoid paying overtime when it's earned is being penny wise and pound foolish, said Matt Van Horn, president of Cutting Edge Self Storage Management and Consulting in Port Saint Lucie, Florida.

"Smile, wave and pay it. If someone went five hours over 40 hours, the $50 is not worth the fight," Van Horn said. "Some people like to toy around with this stuff. The absolute worst case scenario is that someone makes a claim."

Non-Compliance Is Expensive

Employers who are the subject of wage-and-hour disputes could face expensive penalties.

"This issue cost a self storage acquaintance of mine about $40,000," Scarborough said. "All you need is one disgruntled employee to go to the labor board to say they worked 43 hours a week, because they were not paid for their lunch hour when they couldn't close the office. The labor board went back three years. It was hefty."

Dunn agrees that wage-and-hour rules are not an issue business owners want to ignore.

"You don't want to be on the wrong side of this issue," Dunn said. That's because wage laws are set up with the presumption in favor of the employee and against the employer. If the employer owes an employee overtime pay but has not been tracking their hours as the law requires, the presumption accrues in favor of the employee.

"Whatever the employee says goes, and if you don't have records of hours worked then you are out of luck," Dunn said. "These kinds of cases can blow up into expensive propositions quickly."

Natolie Ochi, vice president of SKS Management LLC, which manages 20 facilities in California and Hawaii, says the new rules should serve as a wake-up call for opera-

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tors who have been paying employees low salaries and not tracking their time.

"It definitely will hit those who have been taking advantage of this," Ochi said. "I know small operators who think they should be able to get away with paying low wages and expecting all of this to work."

Ochi says her business pays better than average with healthcare benefits for employees and their families. The result is an average manager tenure of 10 years and very little turnover.

"It's not a passive real estate investment. It's a business, and you need people to manage it," Ochi said. "People are our biggest asset. You get what you pay for with loyalty and longevity."

For large REITs like Extra Space Storage, the new rules are expected to have an impact on a small subset of employees,

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said Jeff Norman, senior director of investor relations and corporate communication for Extra Space Storage. He says the company is waiting the Department of Labor's final ruling on the changes.

"While the changes proposed by the Department of Labor may have an impact on the way in which folks record their time, it will not change the strategic goal of being an employer of choice through providing competitive wages coupled with a creative and engaging workplace," Norman said.

Nitzberg says that the success of the industry, especially that of the publicly traded REITs, means there's more attention on the self storage industry, which makes it harder for operators to plead ignorance or run afoul of the pending overtime rule changes.

"The biggest sea change our industry has had in the past few years is that we used to fly under the radar screen. But with the REITs doing so spectacularly well, the industry can no longer hide," Nitzberg said. "These issues are going to come home to roost, and if smaller operators aren't doing it right, the little guy is going to get clobbered." ❖