

Transport Topics

NFI Settlement May Signal Rise in Federal Audits of Overtime Pay Practices

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[NFI Industries](#) paid \$1 million on Aug. 25 to settle a U.S. Department of Labor audit into whether employees were due overtime pay. Legal experts believe this is just the beginning of a large-scale crackdown ahead of changes in overtime rules in December.

Investigators at the agency's Wage and Hour Division determined that NFI violated the Fair Labor Standards Act when it classified some dispatchers and yard spotters as exempt from overtime pay, an allegation that the company denies.

"Every dollar counts for NFI employees who work long days to earn a living," said David Weil, administrator of the Wage and Hour Division. "The case's resolution should send a strong message to other industry employers who may be denying overtime to workers in these positions."

NFI disagreed with the findings in the settlement but chose to avoid protracted litigation.

"The increase to the weekly salary requirement associated with the proposed changes to the federal overtime exemptions caused NFI to decide to reclassify the positions at issue as nonexempt," the company said in a statement, adding that change occurred in January.

NFI, based in Cherry Hill, New Jersey, ranks [No. 27 on the Transport Topics Top 100 list](#) of the largest for-hire carriers in the United States and Canada.

Labor lawyers contend that more such audits are likely to occur before and after the rule changes. Beginning Dec. 1, salaried employees who don't get overtime must be paid at least \$47,476 annually. That's up from the current \$23,660 threshold. Executives, administrators, professionals, and outside sales and computer employees are exempt from overtime requirements if they meet certain conditions for their job title.

"This is a hot item. They've made a major change in the salary threshold and exposed so many more employees to potential overtime rights," said Philip Mortensen, partner in the Barton law firm in New York City who represents companies on labor and employment law. "I don't think that this [crackdown] will be a one- or two-year deal. This will be a hot issue for longer."

Other attorneys agree that the audits will continue in the near term to ensure compliance, and they suggest companies prepare now for the upcoming rule.

Auditors figure that "while they're under the hood, why not look for this as well?" said Gregory Feary, a partner at Scopelitis, Garvin, Light, Hanson & Feary who specializes in transportation and employment matters. If auditors see a job category that's suspect, they'll start asking questions, he added.

But making these changes could be costly and begin to show up on quarterly earnings reports in late 2016 or early 2017.

"It will be challenging for companies to keep expenses in check, as some may abuse the availability of overtime by throttling back the pace of their efforts on the job in order to increase annual compensation," said John Larkin, an analyst at Stifel, Nicolaus & Co.

Mortensen countered that large carriers will be able to implement the changes without much of a bottom-line effect on their earnings. Smaller carriers might be unaware of the change and fall out of compliance, opening them up to a similar situation as NFI, he said.

Meanwhile, [C.H. Robinson Worldwide](#) agreed to pay \$1 million to settle a class-action lawsuit with 249 former employees alleging they were owed overtime pay. The Eden Prairie, Minnesota-based company ranks No. 4 on the [Transport Topics Top 50 list of the largest logistics companies in North America](#).

But the new rule could mean fewer such litigations, the lawyers contend.

"Because the new rule sets the bar much higher on what salary amount needs to be paid to classify a white-collar worker as exempt/salaried and non-hourly, I would say yes, it'll reduce such suits," said Feary.

Attorney James Boyan, who specializes in labor and employment law, adds that when companies self-correct to comply with the rule, the need to litigate the issue could diminish.

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