Cooley

DOL Issues Final Rule Increasing Minimum Salary Requirements for Overtime Exemptions

May 19, 2016

On Wednesday, May 18, 2016, President Obama and the Department of Labor (DOL) announced the publication of a much-anticipated rule raising the salary floors of the "white collar" overtime exemptions under federal law. The effective date of the final rule will be December 1, 2016.

We previously reported on a proposed version of the rule that set the threshold for the executive, administrative and professional overtime exemptions to $50,440 per year. The final rule lowers that figure slightly to $47,476 per year (or $913 per week). The final rule sets the minimum salary to qualify for the "highly compensated" employee exemption to $134,004 per year (instead of the previously reported $122,148 per year.) The rule now permits employers to use nondiscretionary bonuses and incentive payments, including commissions, to satisfy up to 10 percent of the new standard salary levels. Finally, although the DOL called for comments on whether the duties tests "are working as intended" after releasing the proposed regulations in 2015, the final rule does *not* contain any revisions to the duties tests.

The final rule establishes a mechanism to automatically update the salary level requirements every three years. Specifically, the salary level for the executive, administrative and professional exemptions will be updated to maintain a threshold equal to the 40th percentile of weekly earnings of full-time salaried employees in the lowest wage Census Region. The salary level for "highly compensated" employees will be automatically updated to maintain a threshold equal to the 90th percentile of annual earnings of full-time salaried employees nationally. The DOL will publish all updated rates in the Federal Register at least 150 days before their effective date and also post them on the Wage and Hour Division's website. The first automatic update to these new base salary levels will be on January 1, 2020.

Experts estimate that there are approximately four million exempt employees who currently earn less than the final rule's minimum salary thresholds. Employers will need to decide whether to increase salaries so those employees remain exempt or reclassify them as non-exempt. Non-exempt employees are entitled to overtime and, in the state of California, meal and rest breaks. In addition, state and federal laws require employers to maintain accurate records of non-exempt employees' hours worked, meal periods, split shift intervals and other wage- and hour-related particulars.

Our attorneys have deep counseling and litigation experience on these issues. To discuss these issues further or pose questions about this alert, please contact one of the attorneys listed.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Ann Bevitt **London**	**abevitt@cooley.com** **+44 (0) 20 7556 4264**
Wendy Brenner Palo Alto	brennerwj@cooley.com +1 650 843 5371
Leslie Cancel San Francisco	lcancel@cooley.com +1 415 693 2175
Joshua Mates San Francisco	jmates@cooley.com +1 415 693 2084
Michael Sheetz Boston	msheetz@cooley.com +1 617 937 2330

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.