

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.

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