



Business Law Update

Department of Labor Finalizes New Overtime Rules for White Collar Workers

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The new minimum salary level for exempt employees under the Fair Labor Standards Act (FLSA) will be \$913 per week, or \$47,476 per year, under final regulations that will be released on Wednesday, May 18, 2016, by the U.S. Department of Labor (DOL). This new salary threshold—which will become effective on December 1, 2016—more than doubles the current minimum salary level of \$455 per week, or \$23,660 per year, and will have a dramatic impact on employers. The DOL expects the new rule to extend the right to overtime protections to 4.2 million more employees.

The federal right to overtime dates back to the Fair Labor Standards Act, passed in 1938. The basic rule is that workers must be paid time-and-a-half for any hours worked over 40 hours in a week. In general, all hourly employees must be paid overtime. The same rules apply to salaried employees unless they:

1. earn more than the “salary basis” and
2. primarily perform defined executive, administrative or professional duties.

(There are other exceptions for certain occupations (including teachers, doctors and lawyers) and other limited, special provisions.)

In essence, this means that employees who are not paid at or above the new salary threshold will be entitled to overtime for all hours worked over 40 in a workweek, regardless of the duties they perform for the employer, with few exceptions.

Other highlights of the Final Rule include the following:

- Raising the highly compensated employee ("HCE") threshold—from \$100,000 to \$134,004. This figure is the equivalent of the 90th percentile of full-time salaried workers nationally. Once employees are paid at this threshold, only a minimal showing is required for the employee to be exempt from overtime.
- The minimum salary level will be adjusted every three years to track the 40th percentile of the lowest wage census region, whether that is the Southeast (currently the lowest wage region) or one of the other four Census Regions. Based on projections of wage growth, the DOL expects the salary basis to rise to more than \$51,000 with the first update on January 1, 2020.
- For the first time, employers will be able to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level, as long as those payments are made on a quarterly or more frequent basis.
- Finally, the Final Rule makes no changes to the duties tests; the duties an employee must perform in order to be exempt from overtime as an executive, professional or administrative employee are unchanged.

Employers now have a date certain on which they will need to be in compliance with a Rule we have been anticipating for some time now. In order to prepare, employers will have to identify the employees who will not qualify for the exemption and decide if they want to increase the employee's salary to the new minimum, or determine an appropriate hourly wage, or restrict hours to 40 per week. Employers are free to adjust the wage so that the annual compensation, based on past projections of overtime hours worked, remains relatively constant.

For more information from the Department of Labor, please visit the website: www.dol.gov/featured/overtime. If you have any questions regarding how the Final Rule will impact your workplace, please feel free to contact Samantha Otero: sotero@lawmh.com

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