

DOL Issues Final Rule Limiting Application of “White Collar” Overtime Exemptions

May 21, 2016

On May 18, 2016, the U.S. Department of Labor’s Wage & Hour Division issued its long-anticipated final rule updating its standards for application of the Executive, Administrative and Professional exemptions to the overtime rules established by the Federal Fair Labor Standards Act (“FLSA”).

The FLSA requires payment of a minimum hourly wage and overtime to employees who are not otherwise “exempt.” Currently, to qualify for one of these so-called “white collar” exemptions, employees must:

- Be paid a salary (a predetermined and fixed amount not subject to reduction based upon variation in quality or quantity of work performed) – the “salary *basis* test;”
- Be paid a minimum salary amount (currently \$455 per week or \$23,660 per year) – the “salary *level* test;” and
- Primarily perform certain executive, administrative or professional duties as described by the DOL – the “*duties* test.”

The new rule makes changes to the salary level and salary basis tests while leaving the duties tests unchanged. Most changes focus on the salary level test:

- The existing salary level required for exempt workers will more than double to \$913 per week (\$47,476 per year) – the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (currently the South);
- The total annual compensation requirement for exempt highly compensated employees (HCE) (who are also subject to a minimal duties test) will increase from \$100,000 per year to \$134,004 per year – the annual equivalent of the 90th percentile of all full-time salaried workers nationally; and
- Beginning January 1, 2020, the salary and compensation levels will automatically update every 3 years in order to maintain salary levels at the above percentiles.

The Final Rule also amends the salary *basis* test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the new standard salary level.

The new rule takes effect December 1, 2016. Employers should act now to review the status of employees currently classified as exempt and reclassify any employees who may not have been properly classified or who will no longer be exempt under the new salary level test. For employees who are currently classified as exempt but do not meet the new salary level test (paid at least \$47,476 per year), employers must decide whether to increase their base salary to meet the new standard and maintain the exemption, or begin treating them as non-exempt, recording their hours worked and paying time and one-half for all hours over 40 in a workweek.

If you have questions or if you would like assistance with this or any other matter, please do not hesitate to contact us.

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