

Final Rule Updates Overtime Exemption Regulations

On May 18, 2016, the Department of Labor issued the Final Rule updating the overtime exemption regulations of the Fair Labor Standards Act relating to “white collar” exempt positions. The Final Rule nearly doubles the minimum salary required for exemption of executive, administrative, and professional employees and significantly increases the minimum compensation level for the highly compensated employee exemption. The new rule is expected to extend the right to overtime pay to an estimated 4.2 million currently exempt workers.

Most significantly, the Final Rule:

- Increases the minimum salary level for exempt executive, administrative, and professional employees (also known as white collar exemptions) from \$455 to \$913 per week or \$23,660 to \$47,476 annually;
- Increases the minimum annual compensation level for exempt highly compensated employees from \$100,000 to \$134,004;
- Provides that the salary thresholds will automatically change every three years so that the minimum for the white collar exemption is maintained at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region and the minimum for highly compensated employees is maintained at the 90th percentile of full-time salaried workers nationally.

Under the new rule, employers may now use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the new minimum salary level for white collar exemptions, but only if those payments are paid at least quarterly. The Final Rule does not in any way change the existing job duty requirements necessary to qualify for the white collar exemption.

The Final Rule becomes effective December 1, 2016. Therefore, employers should perform a thorough review of all currently exempt employees to determine if those employees will lose their exempt status by virtue of their salary level. Employers may consider a number of options in order to comply with the new regulations, including raising salaries, paying overtime above a salary, realigning workload or changing work schedules in order to eliminate overtime, or adjusting wages to reallocate between regular wages and overtime so that the total compensation essentially remains the same. Employees who lose their exempt status will be non-exempt employees, and timekeeping and recordkeeping practices should be reviewed to ensure compliance under the new classification.

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