

DOL Issues Final Overtime Rule

On September 24, 2019, the United States Department of Labor issued the long-awaited Final Rule updating the earnings thresholds necessary to exempt executive, administrative, and professional employees from the Fair Labor Standards Act's (FLSA) minimum wage and overtime pay requirements. The Final Rule includes the following key changes, which go into effect on January 1, 2020:

- The “standard salary level” increases from \$455 per week to \$684 per week, equivalent to \$35,568 per year for a full-year worker (previously \$23,700);
- The minimum total annual compensation for “highly compensated employees” (HCE) increases from \$100,000 to \$107,432 per year;
- Employers may use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, and employers may make a “catch-up payment” at the end of a 52-week period to maintain an employee’s exempt status; and
- Special salary levels for workers in U.S. territories and the motion picture industry were updated.

Unless an employee is exempt, employees covered by the FLSA must receive time and one-half their regular pay rate for all hours worked over 40 in a workweek. The DOL estimates that 1.2 million additional workers will be entitled to minimum wage and overtime pay as a result of the increase to the standard salary level.

The thresholds were last updated in 2004. The rule issued by the Obama Administration in 2016 was never enforced due to an injunction by the Fifth Circuit Court of Appeals, and the Final Rule issued last week formally rescinds the 2016 rule. The new Final Rule does not include a mechanism for an automatic increase to the salary thresholds that is tied to inflation, like the Final Rule issued in 2016. In addition, the Final Rule does not alter any of the duties tests for the exemptions.

EMPLOYMENT
Alert

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