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DOL Announces Final Overtime Rule

On September 24, 2019, the Department of Labor (DOL) announced its highly anticipated final rule to increase the salary thresholds for exempt workers under the Fair Labor Standards Act (FLSA). The new rule will be **effective January 1, 2020**. The DOL expects that 1.3 million currently exempt workers will become non-exempt – and entitled to overtime – as the revised federal regulations will increase the salary thresholds for exempt executive, administrative, and professional employees.

Generally, the FLSA requires employers to pay non-exempt employees at least the federal minimum wage for all hours worked and overtime for hours worked in excess of 40 hours per workweek. However, the FLSA exempts from these minimum wage and overtime requirements any employee employed in a bona fide executive, administrative, or professional capacity, among other exemptions. These exemptions are called the “white collar” exemptions.

To qualify for a “white collar” exemption, employees must meet certain tests regarding their job duties, salary basis and salary level. Although the revised regulations do not affect the duties test or the salary basis test, it raises the threshold for the salary level test – by slightly more than fifty percent.

The minimum salary level for the “white collar” exemption to apply will be increased to **\$684 per week (\$35,568 per year)**. This is an increase from the current threshold of \$455 per week (\$23,660 per year). Therefore, as of January 1, 2020, all currently exempt employees who earn less than \$684 per week (\$35,568 per year) will either need to be given salary increases to meet the new salary threshold or lose their exempt status – entitling them to overtime pay. Employers will also be required to keep accurate time records for these newly non-exempt employees.

The revised regulations will also increase the salary threshold for the highly compensated employee exemption from \$100,000 per year to **\$107,432 per year**.

In recognition of evolving pay practices, the revised regulations will allow employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10 percent of the new standard salary level.

The revised regulations also set special salary levels for employees in U.S. territories and in the motion picture industry.

Unlike the previous DOL amended rule on this issue, which was blocked by the courts before it went into effect, the DOL's final rule does not contain any automatic adjustments to the salary thresholds moving forward. Rather, it only states a commitment to periodically review and update the salary thresholds, subject to rulemaking and notice requirements.

The DOL's revised rule only affects federal wage and hour law. Many states and local jurisdictions have their own, more stringent, wage and hour laws and standards, and to the extent that an employee works in one of those jurisdictions, the rule that is the most favorable to the employee will apply.

We previously issued an [advisory of the DOL's proposed rule](#) in March 2019.

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