

New DOL Final Rule Raising the Minimum Salary for Overtime Exemptions

On September 24, 2019 the Department of Labor ("DOL") announced a Final Rule that will increase the minimum salary that must be paid to executive, administrative and professional employees in order to be "exempt" from overtime pay requirements under the Fair Labor Standards Act ("FLSA"). This Final Rule goes into effect on **January 1, 2020**.



Overview

The FLSA mandates the payment of a federal minimum wage, and the payment of overtime at 1.5 times a "nonexempt" employee's regular rate of pay for hours worked over 40 hours in a workweek. There are a number of exemptions to the overtime requirements, including the common "white collar" exemption for employees who primarily perform "executive," "administrative," or "professional" duties. Under current law, an employer is usually required to pay overtime unless it can show that the employee falls under the white collar exemption AND that the employee earns a salary of at least \$455 per week or \$23,660 annually. The Final Rule raises the salary level required for the white collar exemption to **\$684 per week or \$35,568 annually**. The DOL estimates that 1.3 million previously exempt employees will get a raise or become nonexempt as a result of the new Final Rule.

Prior Attempts to Revise the Overtime Rules



Employers may recall that in 2016 the DOL attempted to implement a Final Rule raising the minimum salary level for exempt employees to \$913 per week or \$47,476 annually. That rule, which was scheduled to take effect on December 1, 2016, was ruled invalid and put on hold by a U.S. District Court at the end of 2017. Therefore, the minimum salary level of \$23,660 has remained in place. Unlike the previous rulemaking attempt, the DOL's new Final Rule is likely to take effect as scheduled on January 1, 2020, because it relies on the same methodology that was used to calculate the current salary level. This new increase simply reflects wage growth since the \$23,660 salary level was set 15 years ago in 2004.

Other Provisions of the DOL's Final Rule

In addition to increasing the minimum salary required to qualify for the executive, administrative, or professional exemption, the new Final Rule also:

- Allows employers to use nondiscretionary bonus and incentive payments to satisfy up to 10% of the new salary threshold;
- Increases the threshold required to qualify for the separate "highly compensated employee" ("HCE") exemption from \$100,000 to \$107,432 per year; and
- Provides for special salary thresholds in U.S. territories and in the motion picture industry.

Notably, the new Final Rule does NOT provide for the mandatory revision of minimum salary levels based on wage growth to take place every three years, as the previously attempted

rulemaking did. However, the DOL has announced its intention to update minimum salary levels more regularly in the future through notice-and-comment rulemaking. The new Final Rule also leaves in place the tests currently used to determine whether an employee performs executive, administrative, or professional duties.

Actions for Affected Employers

The new Final Rule will affect almost all employers. Employers should determine whether they are currently treating as exempt any white collar employees earning less than \$35,568 per year. In order to comply with the new Final Rule, employers will need to:

- Raise exempt employee's salaries to at least \$35,568 per year;
- Convert salaried employees earning less than \$35,568 per year to hourly employees, and pay 1.5 times their hourly rate for all hours worked above 40 per week; or
- Document hours worked by salaried employees earning less than \$35,568 per year, and strictly limit those employees to 40 hours of work per week.

There are, of course, many other factors to consider when deciding on the best way to comply with the new Final Rule. However, employers should carefully determine the best course of action to achieve compliance before the effective date of January 1, 2020 arrives.

This memo is intended only as a general overview. If you have any questions or would like legal advice regarding the new Final Rule, assistance navigating the FLSA overtime requirements or any other employment issue, please contact [David Lawrence](#) or [Stacey DiDomenico](#).