

Final Department of Labor Overtime Rules Will Impact Employers

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In 2014, President Obama issued an Executive Order directing the Secretary of Labor to “update and modernize” the overtime exemption rules under the federal Fair Labor Standards Act. In 2015, the Department issued proposed regulations based on this directive, and the proposed regulations resulted in about 270,000 comments. Based on these comments, the Department has now issued its final regulations. The regulations go into effect on December 1, 2016, and include the following changes:

Changes to Minimum Salary Levels. The final regulations significantly increase the salary threshold for the executive, administrative and professional exemptions. The final regulations set the minimum salary level for applicable exemptions at the 40th percentile of weekly earnings for full-time salaried employees in the lowest wage Census Region (currently the South), which is equal to \$913 per week (\$47,476 for a full-year worker). The previous minimum salary threshold was \$455 per week or \$23,660 annually.

Updates to Salary Levels Every Three Years. The final regulations establish a mechanism for automatically updating the salary levels every three years. Future automatic updates to the minimum threshold will occur beginning in January 1, 2020.

Highly Compensated Employees. The final regulations raise the compensation requirement needed to qualify for the highly compensated employee exemption. To meet this exemption, an employee must receive total annual compensation of at least the annualized earnings amount of the 90th percentile of full-time non-hourly workers nationally, or \$134,004 annually. This minimum threshold will also be updated every three years, beginning January 1, 2020.

Consideration of Non-discretionary Bonuses. The final regulations permit employers to count nondiscretionary bonuses, incentives, and commissions toward up to ten percent of the required salary level to meet the exemption. Employers must pay those amounts on a quarterly or more frequent basis. The final regulations allow employers to make a “catch-up” payment at the end of each quarter in order for employees to meet the minimum salary level.

No Changes to Provisions Related to Type and Amount of Exempt Duties. Prior to the final regulations being released, many observers believed that the final regulations would tighten the rules regarding which “duties” an exempt employee may undertake. Some observers believed the FLSA rules would be reworked to require that a certain percentage of an employee’s time be spent on exempt tasks. In the end, however, the Department decided not to make any specific changes in the final regulations to revise the duties test at this time. There have been indications, however, that the duties test may be revised in a future round of rulemaking.

What Should Employers do Now? The final regulations take effect on December 1, 2016. Therefore, employers have a window of time in which to determine which positions in their organizations may be impacted by the final regulations and how to address those positions. One option for employers is to increase salaries to the \$47,476. A second approach is to reclassify employees as nonexempt and pay overtime for any hours worked over forty in a work week. Alternate methods of paying overtime should also be explored. Employers should also review handbook provisions, policies, collective bargaining agreement provisions, and contracts that may be impacted by these regulatory changes. Now is also a good time to reassess position classifications as a whole, and to adjust positions that currently may not be correctly classified. In doing so, both the federal Fair Labor Standards Act and state law must be considered.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.