

## U.S. Department of Labor Issues Final Rule Regarding Overtime and “White Collar” Employees

May 19, 2016

On Wednesday, May 18, 2016, the United States Department of Labor (DOL) issued the final version of revised regulations relating to so-called “white collar” exemptions from overtime pay requirements.

The Final Rule significantly alters the current regulations as they relate to the exemption for executive, administrative and professional employees. The Final Rule deals principally with the salary level necessary to preserve the exemption for such individuals.

Major changes in the Final Rule include:

1. An increase in the current salary level necessary to maintain the “white collar” exemption from \$455 a week (\$23,660 annual salary) to \$913 per week (\$47,476 annual salary).
2. An increase in the total annual compensation for Highly Compensated Employees subject to a minimal duties test from \$100,000 a year to \$134,004 a year.
3. The creation, for the first time, of a mechanism for automatically updating the salary and compensation levels every 3 years.
4. A provision allowing employers to use non-discretionary bonuses and incentive payments to satisfy up to 10% of the salary amount, as long as these amounts are paid on a quarterly or more frequent basis.

As a practical matter, the new regulations will mean either fewer employees will meet the requirements to be exempt from overtime (and thus entitled to overtime pay), or employers must pay higher salaries in order for employees to remain exempt (and thus not entitled to overtime pay).

Fortunately for employers, the new regulations do not change the duties test requirement for the “white collar” exemption, i.e., the primary type of work that must be performed to qualify for the executive, professional and administrative exemptions.

The DOL estimates that its revised regulations will extend overtime pay to an additional 4.2 million workers who are currently exempt.

The effective date of the Final Rule is December 1, 2016, and, as of that date, the new salary requirements must be met in order to preserve the exemption from overtime pay for these employees.



# Client ALERT

Now that the new regulations have been finalized, employers need to review the status of all their employees who are currently exempt from overtime to determine:

1. if they currently meet the new requirements; or
2. if they do not meet the new requirements, whether or not to increase the salary to meet the new requirements (and thereby preserve the exemption); or be prepared to pay them overtime for all hours worked over 40 in a week.

In addition, employers should be aware that those formerly exempt employees who lose that status will now be considered non-exempt employees. Timekeeping and recordkeeping requirements applicable to non-exempt employees will now apply to them and both those employees and their managers should be informed of, and trained with regard to, the change in status and the need to comply with these requirements.

## Contact Information

If you have any questions about or need assistance with regard to these new regulations please contact [David McCormack](#) at 843.720.4612 or [DMccormack@wcsr.com](mailto:DMccormack@wcsr.com) or the [Labor and Employment Practice Group attorney](#) with whom you normally work. For additional information, please see the firm's [Fair Labor Standards Act Blog](#).

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