

Higher Paid Employees Will Be Eligible For Overtime Pay

On May 18, 2016, President Obama and the United States Department of Labor (the “DOL”) announced the publication of the DOL’s final rule updating the overtime regulations. The effective date of the final rule is December 1, 2016 and will automatically extend overtime pay protections to over 4 million workers within the first year of implementation.

The Fair Labor Standards Act (the “FLSA”) governs minimum wage and overtime standards. Under the DOL’s regulations, some workers are exempt from overtime pay protection regardless of the number of hours worked each week. Generally, for the exemption to apply (1) the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (“salary basis test”); (2) the amount of salary paid must meet a minimum specified amount (“salary level test”); and (3) the employee’s job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the “duties test”). That is, all three tests must be met.

As indicated above, the salary basis test requires that an employee be paid a pre-set, fixed salary that is not subject to fluctuation. As for the “duties test”, an executive employee is one who is involved in the management of a business and regularly directs the work of at least two other employees. An administrative employee is one whose duties primarily involve office or non-manual work related to the business’s management, operations or customers.

There are two types of “professional” employees: a “learned professional” is one whose primary duties require advanced knowledge acquired through an extended course of specialized instruction, are primarily intellectual in nature, and require the exercise of discretion and judgment. A “creative professional” is one whose work requires invention, imagination or talent in a recognized artistic or creative field.

Finally, “highly compensated” employees are also exempt from the FLSA minimum wage and overtime rules. A highly compensated employee is one who regularly performs one or more of the duties of an executive, administrative or professional employee and, until passage of the new rules, was paid a minimum of \$100,000 annually.

The new law affects the salary test by increasing the salary and compensation levels that must be paid to administrators, executives, and professionals in order for them to be exempt from overtime pay. The new rule doubles the weekly standard, full-time salary threshold: increasing it from \$455 weekly (\$23,660 annually) to \$913 weekly (\$47,476 annually). The rule also increases



the compensation threshold for highly compensated employees, from \$100,000 to \$134,004 annually. Further the rule establishes a mechanism for automatically updating the salary and compensation levels every three years to ensure that the levels “continue to provide useful and effective tests for exemption.” *Id.* Those automatic updates will begin on January 1, 2020.

As a result of the new rule, employees who earn less than \$47,476.00 a year will be eligible for overtime pay. (Similarly, professional employees who earn less than \$134,004 a year will also qualify for overtime pay). Since the rule will take effect on December 1, 2016, we encourage employers to review their payroll records to ensure that employees are properly classified as overtime exempt or non-exempt. Overtime misclassification is subject to DOL fines and penalties. In addition, the number of misclassification class action lawsuits has grown exponentially over the past few years and will now include higher paid employees, significantly increasing the financial exposure of employers.

Of course, we are here to answer any questions you have regarding the new law, or relating to overtime classification generally, and to help ensure your business is in compliance. For more information please contact:

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