

## **The Department of Labor Raises the Minimum Salary Threshold for Employees to be Exempt from Overtime & Minimum Wage Requirements**

On September 24, 2019, the Department of Labor (DOL) announced that, effective January 1, 2020, the salary threshold for employees to qualify for an overtime and minimum wage exemption under the Fair Labor Standards Act (FLSA) will increase from \$455 per week (or \$23,660 per year) to \$684 per week (or \$35,568 per year). And for employees to qualify under the FLSA's "highly compensated employee" exemption, the minimum salary threshold will increase from \$100,000 per year to \$107,432 per year.

To assist employers in complying with this increase and "in recognition of evolving pay practices," the DOL's new rule also includes the following:

- 1) Employers will be permitted to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least on an annual basis to satisfy up to 10% of the minimum salary threshold.
- 2) There will be a special salary level of \$380 per week for employees in American Samoa, and a level of \$455 per week for employees in Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.
- 3) There will also be a special "base rate" threshold for employees in the motion picture producing industry of \$1,043 per week, or a proportionate amount based on the number of days worked.

This increase is expected to require employers across the U.S. to reclassify approximately 1.3 million employees from exempt to non-exempt status, where the employees will become eligible for overtime pay (and in states like California, meal and rest breaks).

Many employers may recall that this increase was expected to be significantly higher under the Obama Administration, and was expected to have a significant impact in California where the federal minimum salary threshold would have exceeded – for the first time – California's minimum salary threshold for the "white collar" exemptions. This newly announced increase is substantially smaller than previously expected, and for California employers, it represents no change at all. However, if your company maintains employees outside of California, the impact could be significant depending on your current compensation rates.

As a refresher, both California law and the FLSA contain several overtime and minimum wage exemptions for certain occupations and job functions (e.g., administrative, executive, professional, computer software, outside sales; and under the FLSA only, highly compensated employees). To qualify for an exemption, employees generally need to satisfy both a duties test and a minimum salary test. This new DOL rule only impacts the minimum salary test and only impacts exemptions under the FLSA; employees still need to satisfy the duties test to qualify for exemption and, for California employers, employees also need to satisfy the more restrictive salary and duties tests under California law in order to qualify for exemption.

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In advance of the new rule taking affect, all employers – in and outside of California – should review their exempt classifications and confirm that their employees will still qualify for exempt status under both the salary test and the applicable duties test. The analysis with respect to duties, in particular, can often be a challenging one. Hoge Fenton's Employment Law Group is here to help.

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