

DOL Releases Final Overtime Rule Changes

In late September the United States Department of Labor (DOL) released its final rules for establishing the amounts required to be earned by an employee in a given calendar year for that employee to be considered “exempt” from the *Fair Labor Standards Act* (FLSA) overtime requirements.¹

Under the final rules, which go into effect January 1, 2020, the amounts required to be earned by an employee for that employee to be exempt from the FLSA overtime requirements will be:

- \$684 per week (\$35,568 annually), and
- \$107,432 for a Highly Compensated Employee

Background

On May 18, 2016, the DOL released final regulations that modified certain provisions of the FLSA. The final regulations increased the minimum salary required to be earned from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). The final regulations also established a mechanism for automatically updating the salary and compensation levels every three years, beginning January 1, 2020. Additionally, the final regulations increased the total annual compensation requirement for highly compensated employees (HCEs) subject to a minimal duties test to \$134,004 per year from the previous threshold of \$100,000.

Under these final regulations, an employee earning at least the required threshold would be exempt from overtime if the employee could otherwise meet the “exempt duties” requirement. The changes were to go into effect on December 1, 2016. (CMA held special seminars around California and Nevada that year to share the details of the new provisions).

Challenge to FLSA Overtime Rules

Almost immediately, several business groups and twenty-one States filed lawsuits against the DOL in federal court challenging the changes. On October 12, 2016, the court agreed with the position of the twenty-one states who had argued that the FLSA’s overtime changes violated the Constitution by regulating the states and coercing them to adopt wage policy choices that adversely affected the states’ priorities, budgets, and services. The court then immediately granted an injunction delaying the implementation of the proposed new overtime rules. The delay was temporary while the case continued to be litigated and the court could make a determination on whether the DOL had the authority to make the FLSA changes and whether the changes were valid. The delay applied to employers nationwide.

On August 31, 2017, the court issued a final decision striking down the changes to the FLSA overtime rule originally scheduled to be effective December 1, 2016. The DOL then announced that it would release a new proposal and began gathering public input. The new proposal was released by the DOL for public consideration on March 7, 2019.

¹ Keep in mind that some states, such as California, have their own standards for treating individuals as exempt employees. The general rule of thumb where the standards are different is that the employer is required to follow the stricter set of rules.

DOL March 2019 Proposal

Under the new proposal, the amounts required to be earned by an employee in order for that employee to be exempt from the FLSA overtime requirements would be \$679 per week (\$35,308 annually). This was an increase from the current level of \$455 per week (\$23,660 annually) but less than the previous proposed amount of \$913 per week (\$47,476 annually).

DOL Final Rule

Effective January 2020

Under the final rule, the amounts required to be earned by an employee in order for that employee to be exempt from FLSA overtime requirements is now \$684 per week (\$35,568 annually). The new salary level for a Highly Compensated Employee (HCE) will be \$107,432.

Just as before, the final rules permit employers to satisfy the new salary-level requirement by using nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the salary level test. Also, there is no change to the duties requirements employers must consider as part of the process of classifying individual employees as exempt from FLSA overtime.

The final rule does not provide for any automatic increases to the salary thresholds.

Impact of State Employment Laws

As always, individual state employment and compensation laws will need to be considered by employers when evaluating the impact of these new federal provisions on their business. Employers are advised to consult with their human resource department, advisors, or legal counsel to consider which employees, if any, may be impacted.

For a copy of the DOL final rule, click on the link provided below.

https://www.dol.gov/whd/overtime2019/overtime_FR.pdf

The DOL has also released the following documents in conjunction with the final rule:

Fact Sheet:

https://www.dol.gov/whd/overtime2019/overtime_FS.htm

Frequently Asked Questions:

https://www.dol.gov/whd/overtime2019/overtime_FAQ.htm#10

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