

Client Alert

U.S. Department of Labor Issues Final Rule Changes to FLSA Overtime Exemption Requirements

May 18, 2016 – Today, the U.S. Department of Labor (“DOL”) published its Final Rule that will increase the minimum salary threshold requirements for employees to qualify as exempt from the Fair Labor Standards Act (“FLSA”) overtime pay requirements. As we advised in our prior Client Alert in July 2015 ([available here](#)), the FLSA regulations have not been updated since 2004. The Final Rule goes into effect on December 1, 2016.

The DOL’s Final Rule primarily focuses on the salary thresholds to qualify for the executive, administrative or professional exemption (commonly referred to as the “white collar” exemptions). Specifically, the Final Rule will raise the minimum weekly salary requirements to qualify for the white collar exemptions from \$455 per week (or \$23,660 annually) to \$913 per week (or \$47,476 annually). Under current provisions of the New York Labor Law, those employed by New York employers must be paid at least \$675.00 per week to qualify for the white collar exemption (with lower weekly thresholds in Connecticut and New Jersey). As of December 1, 2016, however, employers in all jurisdictions now must pay a minimum of \$913 per week in order to benefit from the white collar exemptions. This means that any employers who had previously classified employees as exempt because they made over \$23,660 annually (or \$35,100/\$24,700 in New York and Connecticut respectively), must now consider whether to increase those individuals salaries or start paying those individuals overtime, where applicable. Of equal importance, employers must ensure that accurate time records are maintained for all those employees who, because of their salary rates, would no longer qualify as exempt under the FLSA.

It is important to note that the minimum salary requirements are merely threshold amounts – those who earn at or above these minimum levels on an annualized basis must still have their job duties and responsibilities evaluated under published standards to determine whether they will be deemed “exempt” from FLSA or state law overtime requirements on the basis of their “white collar” attributes. The Final Rule did not make any changes to the “duties” tests that determine whether employees qualify for the white collar exemptions, but those job duties and responsibilities should nonetheless be evaluated on a regular basis to ensure compliance with the law.

The Final Rule also increases the minimum annual salary an employee must receive in order to qualify under the “highly compensated employee” (“HCE”) exemption from \$100,000 to \$134,004. The HCE exemption permits employers to classify employees as exempt from overtime eligibility without having to ensure that all of the threshold duties and responsibilities of a particular job are met, as is required for the white collar exemptions.

The Final Rule permits the DOL to automatically increase the minimum salary threshold every three years, beginning in 2020 based on economic indicators. The DOL is thus expected to announce new, increased salary threshold levels again in August 1, 2019, 150 days before they would go into effect.

What Employers Need to Know

Employers now have approximately six months to conduct their own internal audits to determine how the DOL’s Final Rule will impact, if at all, their workforces. Employers should evaluate the compensation of all employees—especially those currently classified as exempt under the white collar exemptions or the HCE exemption. To the extent currently exempt employees will earn less than what will be required under the Final Rule, employers will be required to decide whether to 1) increase salaries above the new thresholds; or 2) reclassify such employees as non-exempt with all of the attendant modifications required with respect to hourly, overtime eligible employees.

If you require any additional information about your payroll policies, or any other employment-related issue, please contact:

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