

EMPLOYMENT LAW UPDATE- NEW OVERTIME RULE

May 18, 2016

The Department of Labor (“DOL”) released its final rule updating the overtime exemptions for “white collar” positions under the Fair Labor Standards Act (“FLSA”). The new rule goes into effect on December 1, 2016 and will extend overtime pay protections to over 4 million workers within the first year of implementation. Under the new rule, employees still must satisfy a two-part test to be considered exempt: the duties test and the salary test. The new rule **did not** change the duties test. It did, however, change the salary thresholds for both standard exemptions and the highly compensated employee exemption.

Currently, the salary threshold for employees who satisfy a standard exemption is \$455/week (\$23,660 annually). Under the new rule, the salary threshold increases to \$913/week (\$47,476 annually, less than the previously proposed threshold of \$50,440). This means any employee making under \$47,476, regardless of job duties, will be non-exempt. Those employees will be entitled to overtime pay for hours worked over 40 in a workweek and the employer will need to satisfy all record-keeping and other FLSA requirements for those employees. The final rule allows up to 10% of the salary threshold to be met by non-discretionary bonuses, incentive pay, or commissions. Such payments, however, must be made on at least a quarterly basis. For example, an employee who receives a salary of \$46,000 per year with quarterly non-discretionary bonuses of \$500 (\$2,000 annually) could still satisfy a standard exemption even though the employee’s salary falls below the new threshold because the employee receives total compensation of \$48,000.

The FLSA regulations contain a special rule for highly-compensated employees (“HCE”) whose duties satisfy only part of the duties test for a standard exemption. This has not changed. The salary threshold, however, has changed from \$100,000 or more annually to \$134,004. Unlike the standard exemption salary, the threshold cannot be met by bonuses, incentive pay, or commissions.

The DOL’s final rule also includes automatic updates to both salary thresholds. Updates occur every three years beginning January 1, 2020. The standard exemption salary threshold will rise to the 40th percentile of full-time salaried workers in the lowest-wage Census region. At this time, it is estimated the threshold would be approximately \$51,000 in 2020. The HCE threshold will increase to the 90th percentile of full-time salaried workers nationally, which is currently estimated to be approximately \$148,000 in 2020.

You have until December 1 to take appropriate actions to comply with these changes. At a minimum, you need to immediately identify the full time, exempt employees whose salaries fall below the relevant threshold and determine the possible cost of paying overtime versus raising salaries above the threshold. If you have any questions about the new regulations or wage and hour laws, or if you need any other assistance in labor or employment law, please contact:

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