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What the New January 1, 2020 Overtime Rule Means for Employers

On September 24, the U.S. Department of Labor (USDOL) issued its much-anticipated final rule increasing the salary thresholds for exemptions to the overtime requirements of the Fair Labor Standards Act (FLSA). Since the new rule is effective January 1, 2020, non-compliant employers must act now.

The FLSA generally requires employers to pay employees a minimum wage and overtime in the amount of 1½ times their regular hourly rate for every hour worked in excess of 40 in a single workweek. However, there are several exemptions to the FLSA's requirement to pay overtime, including the "white collar" exemptions for those employees classified as executive, administrative and professional, and the exemption for those employees who are "highly compensated." In order to qualify for an exemption, employees must satisfy both the "salary" test and the "duties" test for each exemption. To meet the salary test, employees must be paid on a salary basis (not subject to improper deduction, including for partial-day absences) at or above the applicable minimum salary threshold. To meet the duties test, an employee's "primary duty" must be the performance of certain duties. This test is somewhat relaxed for the highly compensated exemption.

The Rule

In 2014, the Obama administration proposed a rule to increase the salary threshold for the white collar exemptions from $23,000 per year to $47,000 per year and from $100,000 to $134,000 for the highly compensated exemption. In 2016, after many employers had scrambled to reclassify employees to be nonexempt or to increase employees' salaries to meet the new thresholds right before the rule was set to take effect, 21 Republican-controlled states sued the administration and, in 2017, a Texas federal court enjoined the rule from taking effect.

As previously reported, in March, the Trump administration proposed a new rule that would have increased the salary threshold for the white collar exemptions to $35,308 (less than the Obama administration's proposed rule), with increases every four years following a rule-making and public comment procedure. That proposed rule would also have increased the salary threshold for the highly compensated exemption to $147,414 (more than the Obama administration's proposed rule).

The USDOL's final rule, published after a notice and comment period, increases the salary threshold for the white collar exemptions from the current $455 per week amount (which was set in 2004) to $684 per week (or $35,568 per year) — slightly more than the proposed rule — and increases the salary threshold for the highly compensated exemption from the current $100,000 per year amount to $107,432 per year — significantly less than the proposed rule. The USDOL's final rule also allows employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10 percent of the highly compensated salary threshold. The final rule also revises special salary thresholds for workers in U.S. territories and the motion picture industry.

Any future increases would require a notice and comment period. The USDOL estimates that 1.2 million more workers will be entitled to overtime due to the increases to the salary thresholds for the white collar exemptions and that over 100,000 more workers will be entitled to overtime due to the increase to the salary threshold for the highly compensated exemption.

What the Change Means to Employers

The USDOL's new rule is intended to increase employee compensation – either through salary increases or a new entitlement to overtime. Employers must choose their desired direction based on their particular situation and business needs. If employees are no longer exempt from the FLSA's overtime requirements, in addition to paying overtime, employers must track such employees' hours worked and retain those records as required, and may pay such newly nonexempt employees only for actual hours worked as opposed to on a salary basis.

It is important to note that the USDOL's rule may or may not affect employers, depending on the states in which they operate. For example, in states which follow federal law with respect to overtime exemptions (such as New Jersey and Florida), in states with lower white collar salary thresholds (such as Massachusetts) and in states with white collar salary thresholds that were higher than those under the FLSA but are now less (such as Connecticut), employers must take action and increase the salary thresholds to those set forth in the USDOL's new rule for their employees to maintain their exempt status or decide to pay such employees overtime as appropriate. Complying with the USDOL's new rule does not ensure compliance with applicable law. For instance, some states already have higher salary thresholds for their white collar exemptions (such as New York). As such, New York employers that merely comply with the new USDOL rule would violate state wage and hour law, which also carries significant penalties. Further, depending on the state, the highly compensated exemption may not be recognized at all.

Given the changes to the FLSA salary thresholds, employers should take this opportunity to review the classifications of all their employees to ensure they are properly paid under applicable federal and state laws.

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