

# Labor & Employment Law Alert: USDOL Issues Long-Anticipated Final Rule on Overtime Pay Exemptions under FLSA

The United States Department of Labor (USDOL) on Wednesday, May 18, 2016 released its final rule to update its regulations relative to the overtime pay exemptions for “white collar”, that is, executive, administrative and professional employees, under the federal Fair Labor Standards Act (FLSA).

Here are the key provisions of the final rule:

- 1. Salary Threshold Increased to \$913 per week (\$47,476 per year).** The final rule more than doubles the current salary threshold level for establishing individual exemptions from the FLSA overtime pay requirement, setting the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage United States Census Region, currently the South. Note that the final rule also amends the FLSA “salary basis” test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level. There is no change, however, to any of the existing job duty requirements to qualify for the overtime pay exemptions.
- 2. Automatic Salary Threshold Increases Every 3 Years.** The final rule establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption. The USDOL intends to publish all updated rates at least 150 days before their effective date and will also post them on its website.
- 3. Highly Compensated Employee Exemption is now \$134,004 per year.** The final rule also sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally.

The effective date of the Final Rule is December 1, 2016. The initial increases to the standard salary level (from \$455 to \$913 per week) and HCE total annual compensation requirement (from \$100,000 to \$134,004 per year) will be effective on that date. As states above, future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

Additional information can be found here: <https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.htm>. Please feel free to contact the employment law attorneys at Hancock Estabrook, LLP for assistance in evaluating and implementing these significant changes to the USDOL overtime pay rules. Although there is some time before the final rule becomes effective, we strongly recommend that employers review their current workforce and timekeeping practices immediately to determine which employees are affected, whether to re-classify those employees, how best to communicate this information to employees, and the potential impact these changes may have on the bottom line. It has

been estimated that several million additional workers will become eligible for overtime pay under the FLSA once the final rule is implemented. New York State employers should also keep in mind that the New York State Department of Labor enforces state regulations on overtime pay that differ in some respects from the USDOL rules.

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