A Guide to the Department of Labor’s new Overtime Rules

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On September 24, 2019, the U.S. Department of Labor announced a final rule updating salary requirements for claiming an exemption to the Fair Labor Standards Act (FLSA). This new rule will take effect on January 1, 2020, and result in 1.3 million American workers moving from exempt to non-exempt status under the FLSA.

The Fair Labor Standards Act and its Exemptions

The FLSA guarantees most workers at least the federal minimum wage and overtime at one and-one-half times their regular rate of pay for each hour they work over 40 in a workweek. The FLSA provides exemptions from its requirements for certain employees whose jobs meet specific criteria. Currently, Section 13(a) of the FLSA provides an exemption from overtime and minimum wage requirements if an employee is a bona fide executive, administrative, professional who earns at least $455.00 per week.

In order for an employee to fall under one of the above exemptions its role needs to satisfy three tests. First, the employee must be paid a fixed salary that is not subject to reduction due to the quantity or quality of work the employee performed. Second, this salary must meet a specified minimum amount. Third, the employee’s job duties must primarily involve those associated with executive, administrative, or professional roles.

New Salary Requirements

Effective January 1, 2020, 29 CFR 541 will increase the minimum salary requirements from $455 per week to $684 a week (equivalent to an annual salary of $35,568). The rule does allow employers to use nondiscretionary bonuses and incentive payments to satisfy up to 10% of the standard salary level. Nondiscretionary bonuses and incentive payments are promised to employees to cause them to stay with the company or perform quality work. Individual or group production bonuses would also fall under this category. Commissions are generally considered nondiscretionary because they are based on a prior contract or understanding, meaning the employee generally has a contractual right to the promised commission. In contrast, a bonus that is paid without prior contract, promise, or announcement, and at the employer’s sole discretion would not apply towards this salary requirement.

Thus, an employer can now count a nondiscretionary bonus of up to $3,568 toward the minimum salary requirement. But, in order for these bonuses to count, the employer needs to pay them at least once a year. An employer can use any 52-week period (e.g. fiscal year, calendar year, or anniversary of the date of hire) for this annual bonus. The new rule also allows an employer to make a “catch up” payment within one pay period of the end of the 52-week period in order to satisfy the minimum salary requirement.

Under the current regulations there is a separate less stringent test for “highly compensated employees.” The new rule raises the total annual compensation requirement for highly compensated employees from $100,000 per year to $107,432 per year. Additionally, the new rule revises special salary level for workers in U.S. territories and those that work in the motion picture industry.

These changes mean that many employees will become eligible for overtime pay in 2020 unless their employers increase their total compensation. Should you have any questions or concerns on what these changes will mean for your business, please contact Denis Jacobson at Djacobson@tuggleduggins.com or (336) 271-5242 or Matt Hoyt atMhoyt@tuggleduggins.com or (336) 271-5203.

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