

Don't Delay: No Change in the 12/1/16 Deadline for Compliance with the DOL Final Rule on Overtime

October 21, 2016



The Fair Labor Standards Act ("FLSA") requires employers to pay employees at the rate of one and half times their regular rate for each hour an employee works beyond forty (40) in a work week. However, the FLSA does provide that employees who meet certain duties tests, **and** are paid on a salary basis, **and** have a specified level of salary are "exempt" from the premium overtime requirement.

As we reported in May, the United States Department of Labor ("DOL") has issued a Final Rule revising the FLSA regulations regarding overtime exemptions. Most significantly, the Final Rule requires a dramatic increase in the amount of salary that an exempt employee must be paid if the employer wishes to avoid paying that employee the premium time and one half overtime rate. This "threshold" was formerly \$455 per week, but the Final Rule has more than doubled the old rate, raising it to \$913 per week for the executive, administrative, and professional ("white collar") exemptions. If an employee meets one of the white collar duties test but is paid a salary of less than \$913 per week after December 1, 2016, the employee will no longer be exempt and the employer will be required to pay the employee time and one half for every hour worked over 40 in a work week.

This dramatic increase in the Final Rule's white collar exemption salary threshold caused a clamor among employers, and many groups sought to block, or at least delay, its implementation. At least two groups filed a lawsuit, and at the end of September, the United States House of Representatives passed a bill to delay the effective date of the Final Rule for six months.

Passage of the House bill is causing a great deal of confusion and employers are asking if they still must make salary threshold changes by the Final Rule's December 1, 2016 effective date. The answer is that, without a doubt, employers must still be prepared to comply on December 1st. While passage of the bill reflects the House's support of a delay in implementation of the Final Rule, the bill has yet to be considered by the Senate, which is not expected to occur until after the November election. Even if the Senate agrees to a delay and acts quickly after the election, President Obama, who directed the DOL to consider increasing the salary threshold, has indicated that he will veto any such legislation.

So, employers should already be analyzing job duties, overtime demands, and salary levels in order to make all necessary changes in time for the December 1, 2016 deadline. Wishful thinking that the increases can be avoided is just that, and if employers ignore the deadline, they leave themselves liable for costly FLSA violations.

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