

Publication

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Client Alert: U.S. Department of Labor Raises the Minimum Salary Level for Overtime Exemptions

On September 24, 2019, the U.S. Department of Labor ("DOL") finally unveiled its long-awaited final rule under the Fair Labor Standards Act ("FLSA") which officially will increase the minimum salary level for the "white collar" exemptions applicable to executive, administrative and professional employees. For some context, the minimum salary level was last increased 15 years ago, and the potential modification of the thresholds has been the subject of heated debate politically and within the business community over the last several years. Under this DOL final rule, which takes effect January 1, 2020, the minimum salary level officially will increase from \$23,660 (or \$455 per week) to \$35,568 (or \$684 per week).

In light of the looming January 1, 2020 compliance deadline, employers should immediately audit their workforce and pay practices, in order to assess whether any employee who is currently classified as exempt might fall below the new salary minimum. If there is risk of misclassification of segments of the employee population as a result of the increased threshold, employers must assess whether to increase the affected employees' salaries to satisfy the new minimum level, re-classify those employees as non-exempt and thus eligible for overtime compensation (i.e. for any hours worked beyond 40 in a workweek), or make some other adjustment to the pay practices to account for the new requirements. When analyzing these issues, employers

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also should be mindful of related business considerations, including the impact of employee-classification changes on employee morale, timekeeping practices and training, payroll administration, and other such operational concerns.

The Long and Winding Road to This Point

Many employers have been following this issue closely for several years now, since the DOL under the Obama Administration failed in its 2016 attempt to raise the minimum salary level to \$47,476 (or \$913 per week). That previous DOL proposal was challenged in court by 21 states, and it ultimately was invalidated and enjoined in November 2016 by a federal judge in Texas. Although the Texas court ruling was appealed, that appeal effectively had been held in abeyance while the DOL under the Trump Administration engaged in further rulemaking. As a result, the 2004 minimum salary level test has remained in place.

Following the invalidation of the DOL's 2016 Rule and President Trump's election, the DOL moved fairly slowly in reviewing the minimum salary level and proposing changes. Employers anxiously have been awaiting final action by the DOL, which now has finally arrived. Commentators and practitioners anticipated that the DOL would increase the minimum salary level to somewhere roughly in the middle of the current/2004 salary-level of \$23,660 and the 2016 proposal of a \$47,476 salary level. The DOL has done precisely that by splitting the difference between those two amounts and increasing the minimum salary level to \$35,568.

Details of the DOL's Final Rule

As an overarching matter, the FLSA sets federal minimum wage and overtime pay requirements for most employees, with the exception of qualifying executive, administrative and professional employees who are



exempt from such overtime mandates. For decades now, the DOL's regulations have required that three tests all be met for the so-called "white collar" FLSA exemptions to apply: (1) payment on a salary basis; (2) payment of a minimum salary level; and (3) job duties involving executive, administrative and professional duties, as defined by the regulations. Under the DOL's Final Rule:

- The job duties tests remain unchanged.
- The minimum salary level is increased from \$23,660 to \$35,568, as noted above. However, unlike with the now-superseded 2016 Rule, this \$35,568 figure is not subject to future automatic increases by a self-triggering process. Instead, any increases must be implemented through future rulemaking by the DOL.
- Employers may use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10% of the minimum salary level.
- The minimum total annual compensation for the special rule for "highly compensated" employees is increased from \$100,000 to \$107,432. According to the DOL, this compensation level represents the earnings of the 80th percentile of full-time salaried workers nationally

The DOL estimates that 1.2 million additional workers will be entitled to overtime pay as a result of the increase to the minimum salary level, and that 101,000 additional workers will be entitled to overtime pay as a result of the increase to the "highly compensated" total compensation minimum.

The Final Rule (which is 245 pages long), the DOL's press release, a fact sheet, FAQs, and additional information are available on the DOL's website.



Employer Takeaways

Many employers actually may feel a sense of relief about the DOL's Final Rule, since the new minimum salary level of \$35,568 is significantly less than the 2016 proposal of \$47,476. However, employers must act swiftly to ensure they have sufficient time to analyze how the Final Rule will impact their workforce and make any necessary changes prior to the January 1, 2020 effective date. When doing so, employers are strongly encouraged to consult with their employment counsel and to assess job classifications, pay practices, and other areas of pay-related concern under the complex provisions of the FLSA.

If you have any questions concerning this rule change, do not hesitate to contact Bill Tarnow, David Weldon, or any other member of Neal Gerber Eisenberg's Labor & Employment group.