

## U.S. Department of Labor Announces Final Rule on FLSA Overtime Regulations

May 19, 2016

Last July, we reported that the U.S. Department of Labor (DOL) had issued a notice of proposed rulemaking that sought to update the salary level threshold governing the executive, administrative and professional exemptions to the overtime exemptions under the Fair Labor Standard Act (FLSA). Yesterday, DOL formally announced that it will publish a Final Rule updating the salary level required for exemption, to take effect on **December 1, 2016**.

The FLSA sets the federal minimum wage and overtime pay requirements for most employees, excluding bona fide executive, administrative and professional employees. For decades, DOL's implementing regulations have required three tests to be met for the exemption to apply: (1) payment on a salary basis; (2) payment of a minimum salary level; and (3) job duties involving executive, administrative or professional duties defined by the regulations. Under the Final Rule:

- The job duties tests remain unchanged.
- However, the Final Rule more than doubles the minimum salary level requirement for exempt employees from the current \$23,660 (or \$455 per week) to **\$47,476 (or \$913 per week)**.
- The salary basis test is modified to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy **up to 10%** of the minimum salary requirement, provided such payments are made at least quarterly.

This minimum salary level represents the 40th percentile of earnings of all salaried workers in the lowest-wage Census Region (the South), but the Final Rule provides for future automatic updates to the minimum salary level every three years, beginning on January 1, 2020.

In addition, the Final Rule modifies the special rule for "highly compensated" workers permitting employers to treat otherwise non-exempt employees as exempt, so long as such workers: (1) earn total annual compensation of **\$134,004 or more** (up from \$100,000); (2) perform office or non-manual work; and (3) customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

The Final Rule will result in millions of additional workers becoming entitled to overtime effective December 1, 2016. Employers will either need to increase employee compensation of its current exempt workers earning less than \$47,476, or re-classify such workers as non-exempt employees and pay overtime compensation at one and one-half times their regular rate for hours beyond 40 in a work week.

The impact of the Final Rule will be significant, and with a looming deadline for compliance, employers must analyze employee classifications based on the new minimum salary requirements. Notably, between now and December 1, 2016, employers should assess hours worked by exempt employees who will be impacted by the Final Rule, to determine whether they should raise the salary to the minimum level or reclassify employees as non-exempt for such employees, based on the forecasted potential overtime obligations. Employers also should consider whether they can limit workers' hours to 40 per work week and/or hire additional workers. This highly publicized rule change also presents a good opportunity for employers to examine current exempt classifications and make appropriate changes, without drawing undue attention to correcting historically improper classifications.

• • • • •

This alert was authored by William J. Tarnow II (312-269-8489, [wtarnow@ngelaw.com](mailto:wtarnow@ngelaw.com)) and  
Jason C. Kim (312-269-8019, [jkim@ngelaw.com](mailto:jkim@ngelaw.com)).

If you have any questions related to this article or would like additional information, please contact your attorney at  
Neal Gerber Eisenberg, any attorney in the Labor & Employment practice group, or the authors.  
[Click here](#) for a full listing of our Labor & Employment attorneys.

---

*Please note that this publication should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents of this publication are intended solely for general purposes, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.*

*Any tax advice contained in this publication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.*

*The alert is not intended and should not be considered as a solicitation to provide legal services. However, the alert or some of its content may be considered advertising under the applicable rules of the supreme courts of Illinois, New York and certain other states.*

© Copyright 2016 Neal, Gerber & Eisenberg LLP