

DOL's Overtime Rules Update

On May 18, 2016, ten months after the publication of its proposed rule, the U.S. Department of Labor ("DOL") issued its final rule (the "Final Rule") updating the Fair Labor Standards Act's ("FLSA") overtime regulations relating to the executive, administrative, professional and highly compensated employee exemptions.

As a recap, the FLSA generally requires covered employers to pay their employees at least the federal minimum wage (currently \$7.25 per hour) for all hours worked and overtime pay at 1.5 times the employee's regular rate of pay for all hours worked over 40 in a workweek. The FLSA exempts from these rules, however, employees employed in bona fide executive, administrative or professional capacities, or "highly compensated employees." The DOL has traditionally defined these exempt classifications by requiring the satisfaction of two tests: (1) the salary test; and (2) the standard duties test.

After sifting through over 270,000 comments, the DOL published its Final Rule detailing changes to the salary test.

Effective December 1, 2016, the Final Rule will make the following changes:

1. Raises the minimum salary level for executive, administrative and professional employees to **\$913 per week** (\$47,476 per year) up from the current rate of \$455 per week (\$23,660 per year).
2. Raises the total compensation level for highly compensated employees to **\$134,004 per year**, up from the current rate of \$100,000 per year and higher than the \$122,148 per year that the DOL initially proposed.
3. Provides a mechanism to **automatically update the salary and compensation thresholds every three years** to maintain the fixed percentiles of weekly and annual earnings. The first automatic update, which is scheduled to take effect January 1, 2020, is estimated to set the standard salary level at \$984 per week (\$51,168 per year) for executive, administrative and professional employees, and set the salary level for highly compensated employees at \$147,524 per year.
4. Allows employers to **count nondiscretionary bonuses, incentive payments and commissions toward up to 10% of the minimum salary level** for the executive, administrative and professional exemptions so long

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as those payments are paid on a quarterly or more frequent basis. Employers will be permitted to make a quarterly "catch-up" payment within one pay period of the end of the quarter.

Significantly, the Final Rule does not make any changes to the standard duties tests; does not add any additional examples to the regulations; and does not impose any quantitative limitation on the performance of nonexempt work.

Although employers have approximately 200 days before the Final Rule takes effect, employers should promptly take the following steps:

1. Analyze and identify employee compensation data (including commissions and bonuses) to determine which employees, if any, will be affected by this change in 2016 and potentially in 2020.
2. Consider the options and adopt a plan. Employers should analyze employee hours worked and calculate the costs of increasing salaries to the new required level or reclassifying employees to nonexempt status. If employees are reclassified to nonexempt status, employers should consider whether to maintain employee workloads and pay overtime, hire new employees to reduce overtime hours, or redistribute workloads to reduce overtime hours.
3. After adopting a plan, prepare to communicate the changes to affected employees.
4. Ensure all other policies and procedures are in place. Employers should analyze whether they need to modify bonus and/or commission payment plans to ensure quarterly, rather than annual, payments. Employers should also review employee handbooks and other employee policies to ensure that adequate time-keeping policies, meal and rest policies, and off-the clock policies are in place and properly distributed.
5. Ensure managers and supervisors are adequately trained and prepared to enforce policies and procedures.

Implementing changes to comply with the Final Rule is especially important because the DOL has explicitly stated that it will not consider any "safe harbor" time period for implementation after December 1, 2016.

If you have any questions about this material or would like assistance in updating and analyzing your employee classifications to ensure compliance with the Final



Rule, please contact [Katie D. Triska](#), [Robert S. Driscoll](#), or your Reinhart attorney. Reinhart Boerner Van Deuren will also be offering a complimentary presentation on Wednesday, June 15: **Are You Ready? Updates to FLSA Will Take Effect December 1, 2016**. Register to join us.

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