

SEPTEMBER 26, 2019

## DEPARTMENT OF LABOR ANNOUNCES FINAL RULE UPDATING OVERTIME REGULATIONS, EFFECTIVE JANUARY 1, 2020

On September 24, 2019, the U.S. Department of Labor announced a **final rule** updating the salary basis test's earning threshold for exempt employees under the Fair Labor Standards Act. This new rule will become effective on January 1, 2020. These changes, which will require employers to reassess exempt employee classification, may significantly impact many employers' budgets in coming months.

### HIGHLIGHTS OF THE FINAL RULE

- In order to be considered "exempt" from overtime, employers will have to pay professional, executive, administrative and salaried computer employees a minimum of \$684 per week (the equivalent of \$35,568 annually), up from the current minimum salary of \$455 a week (or \$23,660 annually).<sup>[1]</sup> Employers will be allowed to meet 10 percent of these salary minimums with non-discretionary bonus payments and incentive payments, as long as those payments are paid at least annually.
- The new minimum for the special class of "highly compensated employees" will be \$107,432 annually, up from the current minimum salary of \$100,000 annually.
- The new rule will not change the duties an employee must perform in order to be considered exempt.
- Going forward, adjustments to the new salary minimums will be made using notice-and-comment rule-making every four years.

### PRACTICAL TAKEAWAYS

As noted, this Final Rule will likely have an impact on all employers.

Employers should identify their exempt employees whose current salaries are *less than* the Final Rule's minimum salary threshold of \$684 per week (\$35,568 annually). Employers should also identify their highly compensated employees whose current salaries are less than \$107,432 annually. Employers should consider how to bring those employees' compensation into compliance with the Final Rule by the Final Rule's effective date of January 1, 2020 – either by increasing their salaries to meet the Final Rule's salary levels, or by reclassifying those individuals as non-exempt and making them eligible for overtime. Employers should also identify their highly compensated employees whose current salaries are less than \$107,432 annually. The U.S. Department of Labor **estimates** that:

1.3 million workers who would otherwise be exempt under the currently-enforced standard salary level of \$455 per week will either become eligible for overtime or have their salary increased to at least \$684 per week, and that 4.1 million employees paid between \$455 and \$684 per week who fail the standard duties test (i.e., that are and will remain nonexempt) will have their overtime eligibility made clearer because their salary will fall below the specified threshold. Additionally, an estimated 101,800 workers will be affected by the increase in the HCE compensation test from \$100,000 per year to \$107,432 per year.

Finally, employers should also consider the effect of any state or local laws that carry more generous or existing obligations.

If you have questions regarding these changes, please contact **Mary Kate Liffbrig** at (720) 282-2033 or [mliffbrig@hallrender.com](mailto:mliffbrig@hallrender.com) or your regular Hall Render attorney.

More information on Hall Render's Labor & Employment services can be found **here**.

[references]

<sup>[1]</sup> Note that the Final Rule also sets separate standard salary levels for workers in U.S. territories.

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