



EMPLOYER LAW BLOG

DOL Regulations: New Exempt Employee Salary Thresholds Are Here Now

AUTHOR: SANDBERG PHOENIX

By Narcisa P. Symank

Narcisa Symank, a partner in the Phoenix office, is a former attorney with the Department of Labor. Last year, the Department of Labor published a Notice of Proposed Rulemaking signaling a drastic impending change to the salary threshold requirement for employers to classify certain jobs as exempt from overtime and minimum wage. Since that time, we have been working with clients on workforce analysis and planning, including budget forecasting, to determine the best and most cost-efficient way to adapt to the changes to come.

If you have not already analyzed the impacted positions, now you will have to: On May 18, 2016, President Obama and Secretary Perez announced the publication of the Department of Labor's final rule updating the overtime regulations. Within the first year of implementation, the update will automatically entitle **over 4 million workers** to overtime protections, unless employers update the positions to comply with the changes. The effective date of the Final Rule is December 1, 2016.

The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. Specifically, the Final Rule:

- Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South (\$913 per week; \$47,476 annually for a full-year worker);
- Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally (\$134,004 annually); and

-Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.

This means that if the employees you currently classify as exempt from overtime and minimum wage make less than the new salary threshold for the applicable exemption, they will become entitled to minimum wage and overtime.

Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.

The initial increases to the standard salary level (from \$455 to \$913 per week) and HCE total annual compensation requirement (from \$100,000 to \$134,004 per year) will become effective on December 1. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

Contact our team for help with adapting to the new regulations in a way that makes business and financial sense for your organization.