

# Employment Law Alert: U.S. DOL Issues Final Rule on White-Collar Exemptions, Substantially Raising Compensation Requirements

May 18, 2016

The U.S. Department of Labor's ("DOL") long-awaited Final Rule on white collar exemptions was released this morning and will become effective on December 1, 2016. As anticipated, the Final Rule significantly increases the minimum weekly salary amount that must be paid for white collar employees to be exempt from federal minimum wage and overtime pay rules. In addition, the Rule increases the total annual compensation that must be paid for an employee to be exempt as a "highly compensated employee." With six months to go until the Rule's effective date, employers should start preparing now.

## **What Changes Will the Final Rule Impose?**

By way of background, the federal Fair Labor Standards Act ("FLSA") requires that employees be categorized as either non-exempt or exempt. Non-exempt employees must be paid minimum wage for all time worked and overtime pay for hours worked above forty in a seven-day work week. On the other hand, exempt employees are not subject to these requirements and are typically paid a set salary for all time worked.

The most commonly used FLSA exemptions consist of the white collar exemptions (e.g. executive, administrative, and professional employees), which provide that an employee must satisfy both a weekly salary and a job duties test to fall within one of the exemptions. Currently, the minimum weekly salary that must be paid under the white collar exemptions is \$455, or \$23,660 annually. Under the Final Rule, this minimum weekly salary for the white collar exemptions will double to \$913, or \$47,476 annually. This new weekly salary amount corresponds to the 40th percentile of the weekly earnings of full-time, non-hourly employees in the lowest-wage U.S. Census Region, as calculated by the U.S. Bureau of Labor Statistics. The Final Rule reflects a substantial salary hike for the white collar exemptions, but less than the \$970 per week (\$50,440 annually) figure in the DOL's proposed rule. The new \$917 minimum weekly salary will, however, be adjusted by the DOL every three years to correspond with the new 40th percentile Census figure, beginning on January 1, 2020.

The DOL's Final Rule permits the new minimum salary to be made up purely of salary or to be partially satisfied by other types of non-discretionary compensation. Specifically, 10 percent of the \$913 weekly



salary minimum (or \$91.30 per week) can be paid through non-discretionary bonuses, incentives, and commissions (but not boarding or lodging costs) that are paid at least on a quarterly basis. Non-discretionary bonuses are bonuses that are earned based on objective criteria (such as, achieving sales numbers, productivity measures, etc.) rather than being paid or not in the sole discretion of the employer (such as a discretionary holiday bonus).

In addition to the new white collar salary requirements, the DOL's Final Rule also raises the amount that must be paid for another FLSA exemption - the "highly compensated employee." Currently, an employee with total annual compensation of at least \$100,000 is "highly compensated" and can be properly classified as exempt. The DOL's Final Rule, however, will require total annual compensation of at least \$134,004, to satisfy the "highly compensated employee" exemption, and this annual amount cannot be based on the costs of board, lodging, insurance payments, retirement contributions or other fringe benefits. As with the white collar salary requirements, starting on January 1, 2020, the DOL will adjust the total annual compensation amount for "highly compensated employees" every three years based on U.S. Bureau of Labor Statistics earnings data.

### **What Does the Final Rule Mean for Employers?**

Based on the new Final Rule, employers should get to work analyzing their employee classifications to determine whether "exempt" positions can remain exempt when the Final Rule goes into effect. Employers have several options to consider in preparing to comply with the Final Rule by December 1, 2016, including the following:

1. For employees classified as "exempt" who do not meet the new salary requirements, an employer could increase compensation to satisfy the new salary requirements.
2. "Exempt" positions that do not satisfy the new salary requirements can be reclassified as non-exempt positions, in which case employees holding these roles will become non-exempt and be subject to time tracking, minimum wage and overtime pay requirements.
3. To minimize overtime pay obligations, employers can review and refresh policies to limit hours worked to 40 or less in a work week. In addition, an employer might hire additional employees or redistribute job duties to more than one employee to minimize overtime hours and corresponding pay requirements.
4. Employers can also consider wage rate changes for employees. So long as a non-exempt employee makes at least minimum wage for all hours worked and an employer satisfies any contractual pay obligations, wage rates can be prospectively changed to reduce the cost impact of the Final Rule on positions that may need to be reclassified as non-exempt.

Please visit our blog, the Modern Workplace, for a more detailed analysis of this Final Rule in the coming days, as well as previous posts on the FLSA.