

Groundbreaking changes to the federal Fair Labor Standards Act (“FLSA”) are on the horizon, and they will certainly impact businesses across the country.

### ***Exemptions, Generally***

Under the FLSA, employers must pay covered employees a minimum wage, and time and a half for their overtime hours. Notably, executive, administrative, and professional employees (“white collar” or “EAP” employees) as well as highly compensated employees (“HCE” employees) are exempt from the minimum wage and overtime requirements.

### ***White Collar Exemption***

For the white collar exemption to apply, the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (“salary basis test”<sup>1</sup>). In addition, the amount of salary paid must meet a minimum specified amount (“salary level test”). Finally, the employee’s job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (“duties test”). All of the foregoing factors must be satisfied for the exemption to apply.

Earlier in 2004, the Department of Labor (“DOL”) set the minimum salary requirement at \$455 per week or \$23,660 for a full-year worker. The Final Rule increases the minimum salary requirement. It sets the standard salary level for the white collar or EAP exemption at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, which is currently the South. Therefore, the Final Rule increases the minimum salary requirement to \$913 per week or \$47,476 annually for a full-year worker.

### ***HCE Exemption***

For the HCE exemption to apply, the employee must have a total annual compensation of at least \$100,000, which includes \$455 per week paid on either a salary or fee basis. Second, the employee must perform at least one of the duties or responsibilities of executive, administrative, or professional employees. Finally, the employee must perform primarily office or non-manual work.

The Final Rule increases the total annual compensation requirement needed to exempt highly compensated employees from \$100,000 to \$134,004, which is equivalent to the annual equivalent of the 90th percentile of full-time salaried workers nationally.

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<sup>1</sup> The Final Rule additionally amends the “salary basis test” to allow employers to count nondiscretionary bonuses and incentive payments, including commissions, towards satisfaction of up to 10 percent of the new standard salary level.

### ***Automatic Increases***

The Final Rule establishes a mechanism for automatically updating the salary and compensation levels every three years. The aim is to maintain the levels at the aforementioned percentiles and to ensure that they continue to provide useful and effective tests for exemption.

### ***Effective Date of Changes***

The changes imposed by the Final Rule -- 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 be effective on December 1, 2016. The Final Rule's new mechanism for automatically updating salary thresholds every three years will be effective on January 1, 2020.

### ***Conclusion***

The anticipated modification of overtime compliance law will surely affect businesses across the country. Under the FLSA, businesses bear the burden of proof of establishing the applicability of FLSA exemptions as to their employees. For that reason, businesses must be proactive and act quickly to examine how they are currently paying their exempt employees, so as to ensure that their compensation plans comply with the recent changes to overtime requirements and avoid costly lawsuits.

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