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New federal overtime rules take effect. Who's exempt now?

The DOL's new overtime rule increased the annual salary thresholds for the executive, administrative, and professional exemptions from the FLSA's minimum wage and overtime requirements, effective January 1, 2020. Employers should review their employee classifications and pay practices to ensure compliance.

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Background

The Fair Labor Standards Act (FLSA) establishes federal minimum pay standards for both public and private sector employers. Employees covered by the FLSA must be paid at least the federal minimum wage and, in most cases, overtime at time and one-half of the employee's "regular rate of pay" for all hours worked over 40 in any workweek.

Buck comment. The DOL's final rule updating its regular rate of pay regulations takes effect January 15, 2020. (For more information, see our [January 9, 2020 FYI](#).)

Regulations enforced by the DOL's Wage and Hour Division provide exemptions from these requirements for salaried executive, administrative, and professional (EAP) employees (so-called "white-collar" employees) who satisfy both a minimum salary level test and a duties test and for highly compensated employees (HCEs) who satisfy a higher compensation level requirement and a less stringent duties test.

Last March, the DOL proposed raising the earnings thresholds for both the EAP and the HCE exemptions. (See our [March 12, 2019 FYI Alert](#).) On September 24, the DOL released its [final rule](#) updating those thresholds for the first time since 2004. (See our [September 26, 2019 FYI Alert](#).)

New overtime rules in effect

Effective January 1, 2020, the new overtime rules:

- Increase the “standard salary level” for an exemption from \$455 to \$684 per week (equivalent to \$35,568 per year)
- Increase the total annual compensation requirement for an HCE exemption from \$100,000 to \$107,432
- Allow employers to: (1) use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the standard salary level provided they are paid at least annually; and (2) make a “catch up” payment within one pay period of the end of the year if those bonuses or incentive payments are insufficient to maintain exempt status

Both the job duties and the salary basis tests, which must also be met, remain unchanged.

Buck comment. Employers should review the potential impact of these changes on their employee benefit plans. They may face larger required contributions to their retirement plans if overtime compensation is included in the plan’s benefit or contribution formula. If a plan’s definition of compensation excludes overtime, the overtime pay amounts required by the new rules may cause the plan to become discriminatory in favor of highly compensated employees.

Special salary levels for U.S. territories and the motion picture producing industry

While maintaining a special salary level of \$380 per week for American Samoa, the DOL has set a special salary level of \$455 per week for workers in Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands. It is also maintaining a special base rate threshold for employees in the motion picture producing industry and has set the new base rate at \$1,043 per week or a proportionate amount based on the number of days worked.

Employer options

Employers have several options to deal with formerly exempt employees who fail to meet the new salary requirements, including:

- Increasing their pay to maintain the exemption
- Converting them to nonexempt, hourly employees and paying overtime

In closing

New overtime requirements took effect on January 1, 2020 — increasing salary thresholds for white-collar exemptions and expanding overtime eligibility to an estimated 1.3 million previously exempt employees. Employers that have not already done so will want to confirm that employees formerly classified as exempt remain so and review their pay practices to ensure compliance.

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