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*Supplemental*

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## CHANGES TO THE OVERTIME PAY RULES ARE HERE

On May 18, 2016, the U.S. Department of Labor (DOL) issued its final rule on changes to four exemptions to the overtime pay requirement of the Fair Labor Standards Act (FLSA): the executive, administrative, and professional (EAP) exemptions and the highly compensated employee exemption.

The DOL estimates that the changes will result in 4.2 million additional workers being eligible for overtime pay. Mainly, the rule significantly increases the minimum salary for these exemptions. The increased minimum salary must be implemented by Dec. 1, 2016.

Here is a summary of the final rule's key changes to current FLSA regulations:

- The salary level required for the EAP exemptions is set at the 40th percentile of weekly earnings for fulltime salaried workers in the region in which the salary level is lowest, meaning that as of Dec. 1, 2016, the minimum salary will be \$913 per week, or \$47,476 annually, double the current minimum.
- Up to 10 percent of the EAP salary level can be met with nondiscretionary bonuses, incentives, and commissions that are paid on a quarterly or more frequent basis, and the employer is permitted to make "catch-up" payments. So an employer may pay an exempt employee working under an incentive plan 90 percent of the salary level, as long as the employee's quarterly or more frequent incentive payments equal or exceed at least 10 percent of the salary level; if they do not, the employer can make a "catch-up" payment within one pay period after the end of the quarter.
- The salary level required for the highly compensated employee exemption is set at the annualized value of the 90th percentile of weekly earnings of fulltime salaried workers nationally, meaning that as of Dec. 1, 2016, the new salary level will be \$134,004 annually, a 34 percent increase from the current level.

- The EAP and highly compensated employee salary levels will be updated automatically every three years starting Jan. 1, 2020. The DOL estimates the salary level for the EAP exemptions for 2020 will be \$984 per week, or \$51,168 annually.

Here are some suggested action items for employers to consider in complying with the revised overtime pay rules:

- Identify employees currently classified as exempt who will not meet the new salary level, and decide whether to increase their salaries to meet the new minimum or reclassify them as non-exempt and eligible for overtime pay for hours worked over 40 in a workweek.
- For workers who will be reclassified as non-exempt, decide how and how much to pay them, what their schedules will be, how they will maintain accurate time records, and how to avoid working more than 40 hours in a workweek. Also, determine how to communicate with them in a way that does not hurt morale. Be prepared for some reclassified employees to be disappointed about having less flexibility with their schedules as non-exempt employees.

How employers comply with the revised overtime pay rules will depend on their industries as well as their budgetary constraints and corporate culture, among other factors.

On June 8, 2016, as part of our [certificate webinar series](#), we will present a webinar on FLSA compliance that will focus on the DOL’s final rule.

*The Employment Law Alert is published as a service to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation.*

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