



## U.S. Department of Labor Issues Long-Awaited Overtime Regulations - What Employers Must Do Before December 1, 2016

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As expected, the U.S. Department of Labor (“DOL”) issued its long-awaited final regulations increasing the minimum salary threshold for “exempt” employees under the federal Fair Labor Standards Act (“FLSA”) today. Although the regulations are largely as expected, some changes are of note to area employers.

Since 2004, employers have been required to pay a minimum salary of at least \$23,660 per year to employees covered by so-called “white collar” exemptions in order to exempt them from the FLSA’s overtime requirement. Like the proposed regulations, the final regulations increase this requirement substantially; however, there are some changes to the final rules of note to employers:

- In its original draft of the regulations, the DOL proposed that the salary basis requirement be raised to approximately \$52,000 annually. The new rules, however, drop the stepped up salary basis threshold to **\$47,476 per year** (\$913 per week).
- In addition, the previous draft of the rules proposed that this minimum salary requirement automatically be increased every year. The final regulations provide that increases will occur every **three years**.
- For the first time, employers may **count bonuses and incentive payments** to count **up to 10%** of the new salary level.
- As expected, the **“highly compensated employee”** threshold rises from \$100,000 to \$134,004. This exemption was originally adopted to ease the burden on employers for employees earning high salaries. Above the “highly compensated” threshold, only a minimal showing is needed to support that an employee is not eligible for overtime. The new threshold increases to \$134,004.

- The deadline for implementation is **December 1, 2016**, instead of the anticipated 60 days from adoption. This should give employers ample time to plan for and comply with the new regulations.

### **What You Should Do Now!**

Many of you have already taken steps to deal with the proposed regulations and will merely have to fine-tune your plan to meet the slightly revised final regulations. If you aren't that far along, however, there is still time. Here are some basic steps to take:

1. Review your current salaries for all exempt employees to determine which fall under the new guidelines.
2. Remember, the revised guidelines allow you to count up to 10% of the salary requirement in bonus or incentive payments.
3. Always review job descriptions to determine whether employees meet the "duties" test and are properly classified as exempt in the first place. The "duties" test, at least for the time being, remains unchanged.
4. Analyze how many hours exempt employees under the threshold currently work and calculate the cost if you: (1) increase the salary to the new threshold; or (2) convert them an hourly figure and pay overtime based on projected hours.
5. If you plan to lower the hourly rate for exempt employees so total earnings remain the same, consider the effect on morale.
6. Always use caution! Remember, the salary threshold is only one part of the equation. If an employee does not meet the duties test, even increasing the employee's salary will not necessarily insulate you from an unwelcome overtime claim down the road.

For a pre-publication version of the final rule, go to the following link:

<https://www.federalregister.gov/articles/2016/05/23/2016-11754/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>

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