



Department of Labor Final Rule Raises Minimum Salary for Exempt Status to \$913 Per Week, Effective December 1

May 18, 2016

The minimum salary that an employer must pay in order to classify most workers as exempt from overtime has increased from \$455 per week to \$913 per week. The increase, which translates to a \$47,476 yearly salary, becomes effective on December 1, 2016. The long-anticipated Final Rule, first proposed by the U.S. Department of Labor in the Summer of 2015, is predicted to change the status of over 4 million workers who will now be eligible for overtime pay.

Generally, an employee who works more than 40 hours in a week is entitled to overtime pay unless (1) the employee performs certain duties which are considered "exempt" work and (2) the employee is paid a guaranteed salary which meets or exceeds the weekly minimum. If the weekly salary minimum is not met, the employee is automatically entitled to overtime pay, regardless of the nature of the employee's duties.[1] Thus, the new minimum salary requirement means that many employees who formerly were exempt will now be eligible for overtime pay, even though the employee's job has not changed.

An employer with workers it currently considers exempt, but who do not meet the new \$913 minimum, will have some decisions to make regarding compliance with the new rule. Some options include:

- (1) avoiding overtime by raising the employee's salary to exceed the new minimum (assuming the employee meets the duties portion of the test);
- (2) controlling the employee's hours so he or she never, or rarely, works more than 40 hours in a week, thus minimizing overtime payments;
- (3) trying to make the change "cost neutral" such as by adjusting the employee's pay rate going forward so that the total compensation (base pay plus expected overtime) will approximate the current compensation that is being paid for the same amount of work; or
- (4) taking no action, which will result in increased payroll expense due to the added overtime payments.



All of these, and other possible responses, may impact a company's costs, its organizational structure, and employee morale. The delayed effective date (December 1, 2016) gives some time for each employer to consider the possible strategies that will best work for the company.

The new minimum is slightly lower than the minimum initially proposed in 2015 (\$913 v. \$970). Many comments to the initial proposal were concerned that the proposed salary level did not account for regional variations in salaries. In response to these comments, the DOL arrived at the \$913 minimum by basing it on salary data in the lowest wage region of the country, rather than on nationwide data.

The Final Rule also begins to acknowledge modern compensation practices by allowing an employer to count non-discretionary bonuses, incentives and commissions, if paid at least quarterly, to satisfy up to 10% of the minimum salary requirement.

The new Rule also raises the minimum salary to qualify for the more relaxed "highly compensated employee" exemption. Currently set at \$100,000, an employee will now be required to receive \$134,004 in annual compensation for the employer to be able to take advantage of the "highly compensated employee" exemption.

Moreover, the salary minimum (and "highly compensated employee" minimum) will change over time. An escalation provision in the Rule will automatically adjust the minimums every three years based on changes in specified economic data. The escalation provision will allow the minimums to keep pace with changes in the economy, without the need for further resort to the rulemaking process. The first automatic change in these minimums will take effect on January 1, 2020.

There is the possibility of legislation or litigation which may delay or modify the Rule. However, given the significant changes mandated by the Rule, all employers should consider its impact and be prepared to implement any changes by December 1.

If you have any questions regarding this alert please contact your Lathrop Gage attorney or one of the attorneys listed above.

[1] Certain occupations are not subject to the salary minimum requirement - the most common are teachers, outside sales workers, physicians and lawyers. They will not be impacted by this new rule.