DOL Raised The Bar: Final White Collar Overtime Exemption Rule Doubles Salary Threshold

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New rule is expected to change the exemption status of 4.2 million employees

The U.S. Department of Labor has unveiled the long-anticipated final version of its "white collar" overtime exemption rule, which becomes effective December 1, 2016. The final rule raises the minimum salary threshold required to qualify for the Fair Labor Standards Act's "white collar" exemptions to $47,476 per year (or $913 per week). This is slightly less than the $50,440 per year threshold set out in the proposed rule, but still more than double the current salary threshold of $23,660 (or $455 per week). The final rule is the culmination of a process that began with President Obama's March 2014 memorandum to the Secretary of Labor asking the Wage Hour Division to analyze, overhaul, and streamline the exemptions, ostensibly to increase the number of employees who are eligible for overtime pay. The impact of the rule will be widespread and require immediate attention. Any employee currently considered an exempt executive, administrative, and/or professional employee, but who earns less than the new minimum salary threshold, will have to be reclassified as non-exempt or given a raise by December 1. The DOL estimates that the new rule will change the exemption status of 4.2 million employees. Although the DOL also requested comments regarding whether changes needed to be made to the "duties" test that must be evaluated in determining the appropriateness of an employee's exempt status, the final rule does not make any changes to the duties test. The DOL apparently determined that raising the salary threshold was the simplest way to reduce the scope of the exemptions. The final rule does permit employers to count non-discretionary bonuses, incentive payments, and commissions, that are paid at least quarterly, to account for up to 10 percent of the new salary threshold. The salary threshold also will adjust every three years. It will be tied to the salary level at the 40th percentile of earnings of full-time salaried employees in the lowest-wage Census region, which currently is the South. This is a key departure from the proposed rule, which had suggested that the salary threshold may be adjusted annually and tied to a consumer price index. Another key component of the final rule relates to the "highly compensated employee" exemption. This exemption applies to employees performing office or non-manual work performing at least one, but not all, of the exempt duties of an exempt executive, administrative or professional employee. The final rule increased the salary threshold applicable to this exemption from $100,000 to $134,004. This salary threshold also will change every three years and will be tied to the total annual compensation level at the 90th percentile of full-time salaried workers nationally. Employers must determine whether they are currently considering as exempt any employees earning between the current salary threshold ($23,660) and the new threshold ($47,476). Beginning December 1, 2016, all employees falling within this group will need to be reclassified as non-exempt or given a raise to meet the threshold. Of course, state laws may differ from the FLSA, and where an applicable state law provides greater protection and/or benefit to an employee, that more generous law must always be observed.

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