

Last week, the United States Department of Labor announced its long awaited ruling to revise the salary test for “white collar” exemptions under the Fair Labor Standards Act (FLSA). The new ruling expands overtime eligibility for millions of American workers. The new rule doubled the minimum salary employers must pay workers to maintain their exempt status, thus increasing the number of workers eligible to receive overtime pay. There were no changes to the job duties test, which lays out specific job duty requirements that executive, administrative, and professional workers must fulfill in order to qualify for exemption from overtime pay.

Key Provisions

- **Effective December 1, 2016.** The effective date of the new rule is December 1, 2016, which gives employers time to evaluate the impact on their workforce and implement changes.
- **No Changes to the Duties Test.** The DOL did not make any changes to the actual duties tests in the new rule.
- **More Than Doubles the Salary Threshold for White Collar Exemptions, to \$913 weekly, or \$47,476 annually.** The current salary threshold for the executive, administrative, professional, computer, and outside sales exemption is \$455 per week (\$23,660 annually). The new rule places exemptions at \$913 per week, or \$47,476 annually, setting the salary threshold at the 40th percentile of full-time salaried workers in the lowest wage census region.
- **Increases the Salary Threshold for Highly Compensated Employees to \$134,004 per year.** The new rule raised the salary threshold for highly compensated employees (HCE) to \$134,004 annually, up from the current threshold of \$100,000 per year. The HCE is a lesser known exemption that applies to employees who earn at least \$134,004 annually and who “customarily and regularly” perform at least one of the exempt duties of an executive, administrative, or professional employee, and who are not engaged in manual work.
- **Establishes a Mechanism for Automatic Updates to Salary Thresholds.** The new rule includes a mechanism for automatically updating salary levels *every three years* to maintain the salary threshold at the 40th percentile of earnings. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.
- **Allows Employers to Use Nondiscretionary Incentive Compensation to Meet up to 10% of the New Salary Threshold.** For employers who pay employees on commissions or other incentive compensation, the new rule amends the salary basis test for white collar workers to allow employers to use nondiscretionary bonuses, commissions, and other incentive pay tied to productivity and profitability to satisfy up to 10% of the new standard salary level. To receive credit for nondiscretionary bonuses and incentive pay toward the standard salary level test, employers must make such payments on *at least a quarterly basis*. This means that annual nondiscretionary bonuses will not count toward the threshold unless they are paid more frequently. The rule also permits employers to make “catch-up” payments to maintain an employee’s exempt status if such employee did not receive enough in nondiscretionary bonuses and incentive payments in a given quarter.

Given the importance of these changes, employers are encouraged to review their current workforce and contact the Law Office of Laura Panos to discuss options and strategies for compliance with the new exemption rule. Preparations include wage and hour audits and evaluations of job descriptions to accurately reflect the tasks performed by workers to determine appropriate classifications.