

U.S. Department of Labor Releases Final Rule on Overtime and Doubles Salary Threshold for Common OT Exemptions

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Today, the U.S. Department of Labor released its Final Rule on the changes to the federal overtime law. We previously wrote about the Proposed Rule [here](#). While slightly less onerous than the Proposed Rule, the effects of the Final Rule are just as significant for employers. In an effort to provide notice as quickly as possible, we will highlight only the most significant changes made to the current law.

By way of background, there are several exemptions from overtime pay permitted under state and federal law. The more common exemptions are referred to as executive, administrative and professional exemptions. In order to qualify for these exemptions, employees must, among other things, be paid, at a minimum, a specific salary, which is currently set at \$455 per week (\$23,660) in existing federal regulations. The Final Rule impacts only this salary level test, and not the duties test, which employees also must meet under the executive, administrative and professional exemptions to be exempt from overtime pay. While there was concern that the Obama Administration would revise the duties test, the Final Rule left the duties test untouched.

Highlights of the Final Rule include:

- The salary threshold doubles to \$913 per week or \$47,476 per year.
- The salary threshold will automatically update every 3 years, and it is expected that the salary threshold by January 2020 will be more than \$51,000 per year.
- Non-discretionary bonuses, commissions and incentive payments paid no less frequently than on a quarterly basis can count for up to 10 percent of the new salary threshold.
- For those employees who meet the overtime exemption referred to as the "highly compensated employee" exemption, the salary threshold was raised from \$100,000 to \$134,004. The salary threshold for highly compensated employees will also automatically update every 3 years.
- The new rule becomes effective December 1, 2016.

Between now and December, employers will need to review and evaluate their workforce to determine how to be compliant with the new regulations. Becoming compliant could occur in a number of ways including increasing salaries to maintain the overtime pay exemption, paying overtime to employees in lieu of adjusting their salary, reducing overtime hours by hiring more personnel and/or redistributing workload, or adjusting base salary downward and allocating the adjustment to anticipated overtime hours to keep total compensation flat.

Amy Habib Rittling or Vincent Miranda are able to assist employers in establishing a framework for a review of how this Final Rule will impact their workforce and to recommend solutions to remain compliant once the Final Rule is effective. [Click here](#) to read this and other developments in labor and employment law at the New York Employment Law Update.

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