U.S. Department of Labor Releases Final Rule Revising "White Collar" Exemptions

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On May 18, 2016, the U.S. Department of Labor ("DOL") issued its final rule revising the so-called "white collar" exemptions under the Fair Labor Standards Act ("FLSA"). Most significantly, the rule raises the minimum salary a worker must be paid to qualify for the executive, administrative, and professional exemptions to $913 per week (or $47,476 per year), substantially increasing the number of workers who will be entitled to overtime as a matter of federal law. The rule goes into effect on December 1, 2016.

The new overtime rule was first proposed by the DOL on July 6, 2015, after President Obama directed the DOL to update the regulations on the FLSA's "white collar" exemptions. (Foley Hoag's alert on the proposed rule can be found here).

The final rule sets the salary threshold at the 40th percentile of weekly earnings for full-time salaried workers in the nation's lowest wage Census Region (currently the South). This is a lower threshold than was set forth in the proposed rule, which would have set the salary threshold at the 40th percentile of weekly earnings of full-time salaried workers nationally. Currently, employees need only be paid a salary of $455 per week (or $23,660 per year) to qualify for the "white collar" exemptions. The final rule allows employers to count nondiscretionary bonuses, incentive payments and commissions toward up to 10% of the salary threshold, provided that the employer pays these types of compensation at least quarterly.

The new rule also increases the minimum salary that must be paid to employees in computer-related occupations, but leaves the existing alternative hourly rate of $27.63 intact. The changes do not impact the outside sales exemption, as that exemption is not subject to the salary level test.

The final rule also raises the compensation threshold applicable to the exemption for highly compensated employees from $100,000 to $134,004. This figure represents the annualized weekly earnings of the 90th percentile of full-time salaried workers nationally.

The new rule provides for the salary thresholds for the white collar and highly compensated employee exemptions to be increased automatically every three years, so that they continue to meet the earnings percentiles set forth in the final rule. The proposed rule had mandated annual updates to the salary requirement.

The final rule does not alter the duties tests applicable to the white collar exemptions. While the DOL had not proposed a change to the duties tests, there had been speculation that the DOL may incorporate such a change in the final rule.

The new rule will result in millions of workers who are now classified as FLSA-exempt becoming overtime eligible absent an increase in salary. The DOL estimates that 4.2 million workers who are currently classified as exempt will be impacted by the new rule in 2017 alone.

In light of the new rule, employers with exempt employees being paid less than $913 per week (or $47,476 per year) must review its classification of these employees before the rule goes into effect on December 1, 2016. If an employer wants to continue classifying these employees as exempt, it will have to raise their pay above the minimum salary level. Otherwise, employers will have to begin treating these employees as non-exempt, hourly employees. In that case, employers will want to review the compensation paid to these employees and consider setting their hourly rate at a level that anticipates how much they will be earning as overtime.

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