

U.S. Department of Labor Announces New Overtime Salary Basis Rule

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On September 24, 2019, the U.S. Department of Labor (DOL) unveiled the final version of its new overtime salary basis rule. The new rule increases the minimum salary threshold for salary-based overtime exemptions from \$455 per week (or \$23,600 annually) to \$684 per week (or \$35,568 annually). In addition to increasing the salary basis for administrative, executive and professional employees, the new rule allows employers to use nondiscretionary bonuses and incentive payments (such as commissions) to satisfy up to 10 percent of the salary basis level, and also increases the required total annual compensation for “highly compensated employees” from \$100,000 per year to \$107,432 per year. The rule goes into effect on January 1, 2020.

The salary basis increase is the first such increase since 2004 and, according to the DOL press release, was designed to account for increases in employees’ earnings since that time. The DOL under the Obama Administration had previously attempted to increase the salary basis threshold to \$913 per week, or \$47,476 annually, but a federal court struck down this proposed change in 2016. Whether the new rule announced yesterday will face similar obstacles remains yet to be seen. Many experts anticipate a legal challenge, but it is too soon to tell.

In the meantime, employers should prepare to comply with the new rule. Employers should evaluate their current pay practices to determine whether any employees who currently fall under the administrative, executive or professional exemptions are paid less than the \$684 per week threshold. If so, employers will need to either raise the pay of those employees to at least the \$684 threshold so the employees continue to be overtime-exempt, or they must treat those employees as non-exempt, tracking their hours and paying overtime for all hours worked over 40 in a workweek. As many as 1.3 million employees nationwide could be affected, so employers – especially in the retail, hospitality, and food service industries – should start planning now for this change.

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