



## DOL Announces New Overtime Rule, Raising Salary Threshold for Exemption

On September 24, the U.S. Department of Labor (DOL) announced [a final rule](#) to update and increase the salary level required for an employee to qualify under the federal Fair Labor Standards Act (FLSA) as an exempt executive, administrative or professional employee.

### The New Rule

- Increases the requisite salary level for exemption from \$455 per week to \$684 per week (equivalent to \$35,568 annually). There are special lower rates applicable in American Samoa, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.
- Increases the requisite total annual compensation amount for “highly compensated employees” from \$100,000 to \$107,432 per year.
- Allows employers to apply nondiscretionary bonuses and incentive payments, including commissions, to satisfy up to 10% of the new salary level.
- Allows employers to make an end-of-year “catch-up” payment if an employee does not earn enough in nondiscretionary bonuses and incentive payments to retain exempt status. The catch up payment may be up to 10 percent of the standard salary level for the preceding 52-week period.

The new rule will become effective on January 1, 2020. The salary threshold for exemption has not been increased since 2004.

Employers will recall that several years ago a more extensive rule change was enjoined and ultimately invalidated by the U.S. District Court for the Eastern District of Texas, and that the U.S. Court of Appeals for the Fifth Circuit held an appeal in abeyance pending further rulemaking by the DOL. The DOL’s new rule does not raise the salary threshold nearly as high as the previous rule would have – \$913 per week -- nor does the new rule include an automatic annual cost of living increase.

The DOL estimates that 1.2 million additional workers will be entitled to minimum wage and overtime pay as a result of the new rule. The DOL also estimates that an additional 101,800 workers will be entitled to overtime pay as a result of the increase to the highly compensated employee compensation level.

Employers should bear in mind that meeting the salary threshold is not sufficient, in and of itself, to qualify an employee for exemption. The employee must be paid on a salary basis and also perform exempt duties as defined

in the law. These are fact-specific inquiries that require careful analysis to determine if the employee is truly non-exempt under the law.

## **For Questions/More Information**

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