

# Employment Law

## They're Here! Long-Awaited Rules on White Collar Overtime Exemptions Released by US Department of Labor

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On May 18, 2016, the United States Department of Labor (“USDOL”) released its long-anticipated changes to the Fair Labor Standards Act’s (“FLSA”) overtime exemption rules (the “Final Rule”). The Final Rule marks the first major revision to the overtime rules since 2004. Significantly, it changes the minimum salary and fee level employees must receive to be potentially eligible for the white collar overtime exemptions. This change is estimated to significantly increase the number of overtime-eligible employees in the United States. Here are the **Final Rule** and **USDOL Fact Sheet**.

By way of background, the rules regarding exempt executive, administrative and professional employees were established in 1940. In an effort to modernize the rules, in 2014, President Obama directed the USDOL to examine and update the rules applicable to employees exempt from the overtime rules under the executive, administrative and professional exemptions (the “White Collar Exemptions”). A Notice of Proposed Rulemaking was published on July 6, 2015, and a significant comment period followed.

The FLSA provides that if certain criteria are met, white collar employees are exempt from its minimum wage and overtime provisions. The rules have always set three (3) requirements for application of the White Collar Exemptions: (1) the employee must earn a salary (or fee) “that is not subject to reduction because of variations in the quality or quantity

of work performed” (the “salary basis test”); (2) the salary or fee must be in the requisite minimum amount (the “salary level test”); and (3) the employee’s job duties must involve executive, administrative or professional duties as defined by the applicable regulations (the “duties test”). The rules also currently set a relaxed duties test for employees earning at least \$100,000 per year (“highly compensated employees”). The current salary level of \$23,660 per year (\$455 per week) was last adjusted in 2004.

The Final Rule is designed to address the effect of the 2004 changes, which exempted lower paid workers from overtime although they performed few of the requisite duties. The Final Rule increases the minimum salary required from \$23,660 to \$47,476 (\$913 per week) annually. This sets the standard salary level at the 40<sup>th</sup> percentile of earnings of full-time salaried workers in the Southern part of the United States, which is the lowest-wage earning Census region. The Final Rule also increases the annual salary for highly compensated employees to \$134,004. Significantly, the Rule also provides for automatic, periodic updates to the salary and compensation levels, every three years, to ensure maintenance of “a threshold equal to the 40<sup>th</sup> percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region.” See Fact Sheet. In addition, the Final Rule permits employers to include nondiscretionary bonuses and incentive payments to satisfy up to 10% of the standard salary level, as long as the payments are made at least quarterly.

The Final Rule will go into effect on December 1, 2016.

The Final Rule does not make any changes to the duties test. The Rule will impact nearly all employers in the country, especially those with exempt employees currently earning between \$23,660 and \$47,476 per year. The USDOL estimates that the Final Rule may extend overtime pay to approximately 4.2 million workers who are currently classified as exempt. Employers must immediately become familiar with the rules and strategies to address the increased labor costs.

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