

## Employers Take Note: The Department of Labor Has Expanded Overtime Pay Protections

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Significant changes in the minimum wage and overtime payment protections of the Fair Labor Standards Act ("FLSA"), which will become effective on December 1, 2016, will impact virtually every employer. Under the current law, employees who are paid a fixed salary of at least \$455 per week (\$23,660 annually) and whose job duties are primarily executive, administrative, or professional (as defined by the "job duties" test established in Department of Labor regulations) are not entitled to receive additional compensation for more than forty hours' work in a workweek. Current law provides a similar exemption for highly compensated employees with an annual salary of at least \$100,000.

On May 18, 2016, the Department of Labor issued its long-awaited and much-anticipated Final Rule updating the regulations applicable to the exemption of certain executive, administrative, and professional or highly-compensated employees from the minimum wage and overtime pay protections. The Final Rule is the result of President Obama's March 2014 directive to U.S. Labor Secretary Thomas Perez to "modernize and streamline" the regulations governing exemptions from the FLSA's minimum wage and overtime pay requirements, which have not been updated since 2004. The Final Rule will be published in the *Federal Register* on May 23, 2016, and it is currently available here.

Employers should be aware of four key provisions of the Final Rule. **First**, the 2016 salary threshold for exempt executive, administrative, or professional employees will be \$913 per week (or \$47,476 annually) – which is more than double the current threshold. The new salary level is based on the 40th percentile of the lowest-wage region, which, not surprisingly, is the South. **Second**, the 2016 salary threshold for highly compensated employees will increase from \$100,000 to \$134,004. This salary level is based on the 90th percentile of full-time salaried workers nationally (rather than regionally). **Third**, for the first time, employers will be able to include non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level. **Fourth**, the Final Rule provides for automatic updates every three years, beginning on January 1, 2020, to maintain the salary thresholds based on the same criteria described above. And one final note: Although the Final Rule does not change the current job duties test, the need to apply the duties test may be reduced. The increased salary alone likely will be sufficient to distinguish between those employees who may meet the job duties test and those who likely would not.

The new overtime regulations will significantly affect virtually every employer, regardless of the business or industry, when they become effective on December 1st. Therefore, we encourage employers to act now to review and analyze those employees currently classified as exempt from overtime payments and to prepare to reclassify or restructure as necessary to comply with the Final Rule on its effective date. Failure to implement necessary changes in a timely manner could prove costly, as we can anticipate a future wave of litigation against non-compliant employers.

### ATTORNEYS

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### CAPABILITIES

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## RESOURCES

Should you have any questions or wish to discuss these matters, please contact either Rachel or Kathryn in our Employment Section.

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