

Employment Law Update

Change to Salary Requirement for Overtime Exemption Coming on January 1, 2020.

I wanted to make sure you are aware of a change in federal overtime/wage-and-hour law for 2020. The United States Department of Labor has issued its final regulations significantly changing the rules under the Fair Labor Standards Act (FLSA) which govern overtime pay and exemptions from overtime-pay requirements. The most significant change is that under current law, an exempt employee must, among other requirements, be paid on a salary basis with the salary exceeding \$455 per week or \$23,660 per year. That minimum salary amount is being changed to **\$684 per week** or **\$35,568 per year**. This means that **after January 1, 2020**, any exempt employees being paid less than \$35,568 per year must either get a raise to that amount or be treated as non-exempt and paid the required overtime rate (1.5 times the regular hourly rate) for any hours exceeding 40 hours in a work week. The new regulations also allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the base standard salary level. Employers should review their employees to see if there are any exempt employees whose exemption status may be affected by this change. Although the rule changes no existing job-duty requirements for the overtime exemptions under the FLSA and is only changing the salary basis requirement, it is also a good opportunity to review employees classified as exempt to ensure those employees are properly classified as exempt. We would be glad to assist or answer questions about these changes or other wage-and-hour issues.

There is also a change in the amount to be a highly compensated employee, which is an exempt classification requiring a higher amount of pay but fewer other requirements to be exempt. The current amount is \$100,000 per year, but it will be raised under the new regulations to \$107,432 per year.

You may recall that a much greater increase was scheduled to go into place in December 2016 but was prevented from going into effect by a federal court shortly before the regulations were to become effective. Then the Trump administration took office in January 2017, so that change never went into effect. Many employers made adjustments at that time in anticipation of the thwarted 2016 change. If you made changes in 2016, you are probably not going to need to make any changes now, but between now and the end of 2019 you should review the salary levels of your exempt employees just to make sure they are all more than \$684 per week. I am not aware of any impending court challenges to this new rule, so it will likely go into effect on January 1, 2020.

If you have questions about this or with any other employment issues, please contact us.

Here are links to additional information:

- [**Federal Register notice of final rule**](#)
- [**U.S. Department of Labor announcement**](#)
- [**U.S. Department of Labor Fact Sheet**](#)
- [**U.S. Department of Labor FAQs**](#)