



COMPLIANCE CONNECTION

DOL Overtime Rule Change

On Tuesday, September 24, 2019, the United States Department of Labor (DOL) released a new rule, increasing the minimum salary level for exempt status to \$35,568 per year for a full-time employee, effective January 1, 2020. The prior threshold for exempt status, in place since the last rule change in 2004, was \$23,660. For employers subject to the Federal Fair Labor Standards Act (FLSA), this rule will have the effect of converting any employee earning less than the new baseline salary to a non-exempt, overtime-eligible employee, even if the employee's duties would otherwise qualify the employee as exempt from the FLSA's overtime requirements. This change stands to impact over a million US workers.

The proposed rule creates the following changes:

- Raises the minimum salary for an exempt administrative, professional, or executive employee to \$684 per week or \$35,568 per year
- Raises the minimum salary for an exempt "highly compensated employee" from \$100,000 to \$107,432
- Permits employers to include some nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the minimum salary requirement
- Allows employers to make a one-time "catch up" payment to an employee whose annual salary will fall short of the new minimum in some circumstances

The consequences of such a conversion can be serious for the unaware employer. Most employers do not track hours worked by exempt employees. For most employers, if an employee previously properly classified as exempt is converted to non-exempt status, the regular rate for overtime compensation is calculated by dividing the employee's weekly salary by 40 and multiplying the number of hours by 1.5. For employees who work more than 40 hours in a week, or who work in seasonal industries with "busy periods" where overtime is the norm for part of the year, the resulting overtime claims can be substantial. An employee who earns an annual salary of \$35,000 and works 50 hours per week, for example, could expect to earn approximately \$250 per week just in overtime compensation, and an unsuspecting employer hit with an overtime claim can expect to pay the missed wages plus attorney's fees and penalties. Such wage claims are also a favorite target of plaintiff's class action attorneys, and an employer who fails to convert a group of employees to hourly status can be hit with a business-jeopardizing class action.

Nothing in the DOL's new rule changes the duties requirements for exempt administrative, professional, or executive employees, nor does the rule impact the minimum wage for non-exempt employees.

Next Steps:

For assistance in assessing whether employees are properly classified, reclassifying employees, or implementing a compliant bonus or commission system, please contact Innovative Benefit Planning.

This Compliance communication is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.