

New Rule Will Extend Overtime Eligibility to Millions

The **Department of Labor** this week published its final rule on overtime regulations, more than doubling the income threshold for overtime exemption and extending overtime eligibility to more than four million additional workers. Effective Dec. 1, 2016, the new rule is likely to have a substantial impact on employee compensation in 2017. Among the key points of the rule:

- **Overtime Salary Threshold.** The final rule will raise the salary level for overtime eligibility (for the first time since 2004) from \$455 a week (\$23,660 a year for a full-year worker) to \$913 a week (\$47,476 a year). As a result, 35% of full-time salaried workers will automatically be entitled to overtime, based solely on salary.

- **Highly Compensated Employees (HCE) Salary Level.** The rule also updates the total annual compensation level above which most white collar workers will be ineligible for overtime, raising it from the current \$100,000 to \$134,004 a year.

- **Automatic Updates.** The salary threshold will be updated automatically every three years, beginning on Jan. 1, 2020. Each update will raise the standard threshold to the 40th percentile of full-time salaried workers in the lowest-wage Census region, estimated at \$51,168 in 2020.

Post in Advance

The HCE threshold will increase to the 90th percentile of full-time salaried workers nationally, estimated to be \$147,524 in 2020. The Department will post new salary levels 150 days in advance of their effective date, beginning August 1, 2019.

- **Bonuses, Incentive Payments, and Commissions.** The final rule will allow up to 10% of the salary threshold for non-HCE employees to be met by non-discretionary bonuses, incentive pay, or commissions, provided these payments are made on at least a quarterly basis. The DOL will permit employers to make

a “catch-up” payment if the bonus and salary falls short of satisfying the salary threshold in a quarter.

“This recognizes the importance these forms of pay have in many companies’ compensation arrangements, particularly for managerial employees affected by the final rule,” notes the DOL, adding that “this is a new policy that responds to robust comments received from the business community on this matter.”

- **Duties Test.** The final rule does not make any changes to the “duties test” that determines whether white collar salaried workers earning more than the salary threshold are ineligible for overtime pay.

In order to be lawfully claimed as “exempt,” an employee must meet the DOL’s definition of an executive, administrative, or professional employee and have the ability to use his/her own independent judgment and discretion when making decisions, i.e., not be subject to close supervision or control.

Under the new rule, fewer employers and workers will have to worry about applying the “duties test” because the higher salary threshold means more workers’ entitlement to overtime pay will be clear just from their salaries.

For workers with salaries above the updated salary level, employers will continue to use the same duties test to determine whether or not the worker is entitled to overtime pay.

For more information, go to www.dol.gov/overtime.

