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>>ALERT

DOL CONFIRMS FEDERAL SALARY LEVEL FOR OVERTIME-EXEMPT EMPLOYEES

On September 24, 2019, the U.S. Department of Labor (DOL) issued a new Final Overtime Rule (the 2019 Final Rule), which goes into effect on **January 1, 2020**.

The 2019 Final Rule formally rescinds the Obama-era overtime rules, which a federal court invalidated in November 2016. For additional information, please see our prior [alert](#) on this topic.

THE FINAL RULE

The 2019 Final Rule updates salary and compensation levels for exempt employees and broadens the types of compensation that can be considered in determining employee exempt status as following:

- >> The new minimum exempt “standard salary level” under federal law will be raised from \$455 per week (\$23,660 annually) to \$684 per week (\$35,568 annually). In addition to satisfying this new minimum salary requirement, employees who are properly classified as “exempt” must also still meet the applicable “duties” test to be exempt from overtime pay, such as under the administrative, executive or professional exemptions. The [DOL fact sheet](#) defines the most commonly applicable exemptions.
- >> To meet the new standard salary level above, employers will now be able to use nondiscretionary

THE BOTTOM LINE

Before January 1, 2020, employers should evaluate the impact of the 2019 Final Rule by identifying exempt administrative, executive and professional employees who earn less than \$35,568 per year, as well as employees who earn less than \$107,432 per year and are categorized as exempt based on the highly compensated employee test. This is an ideal time for employers to revisit employee classifications to ensure Fair Labor Standards Act (FLSA) compliance.

bonuses and incentive payments, including commissions, which are paid at least annually to employees, to satisfy up to 10% of the minimum salary level.

- >> To qualify for the “highly compensated employee” exemption, an employee’s total annual compensation will need to be at least \$107,432 per year (up from the current standard of \$100,000 per year, but far less than the initial proposed increase under the Obama-era rules). In addition, an employee’s primary duty must include performing office or non-manual work and the employee must customarily and regularly perform at least one of the exempt duties of an exempt executive, administrative or professional employee.

In the 2019 Final Rule, the DOL has also indicated that it will update minimum earnings thresholds on a more regular basis through notice-and-comment rulemaking.

STATE REQUIREMENTS

Despite these changes at the federal level, companies in states such as New York and California are covered by even higher minimum salary requirements for administrative and executive employees who are exempt. For additional information on New York’s minimum exempt salary requirements, see our previous [alert](#).

For example, under New York State law, the current minimum exempt salary level is \$1,125 per week (\$58,500 annually) for New York City employers with 11 or more employees. In California, the current minimum

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exempt salary level is \$960 per week (\$49,920 annually) for employers with 26 or more employees.

In these jurisdictions, employers must continue to meet the state requirements despite the implementation of the 2019 Final Rule at the federal level.

IMMEDIATE NEXT STEPS

With regard to employees classified as exempt based on the current federal exempt salary minimum, or

as highly compensated employees under the current legal standard, employers should consider increasing their salaries to retain exempt status. Alternatively, consider converting impacted employees to non-exempt, overtime-eligible status. Employers should also analyze hours worked by affected employees to help assess expected overtime costs, and if overtime hours for certain non-exempt personnel can be reduced or eliminated.

FOR MORE INFORMATION

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