

CLIENT NEWS BRIEF

Final Rule Increases Minimum Salary Threshold For FLSA Overtime Exemptions

On September 24, 2019, the U.S. Department of Labor (DOL) announced its Final Rule, updating the minimum salary necessary for an executive, administrative or professional employee to be exempt from overtime pay requirements. Based on these revisions to the federal overtime rules, the DOL anticipates 1.3 million more employees will now be entitled to overtime pay.

The DOL previously published updates to federal overtime regulations, effective December 1, 2016 ([See 2016 Client News Brief Number 39](#)). However, a federal court enjoined and invalidated the 2016 revisions. The DOL has not enforced any of the 2016 revisions to date, and the Final Rule rescinds the 2016 revisions.

The federal Fair Labor Standards Act of 1983 (FLSA), generally requires covered employers to pay employees a minimum wage and overtime premium pay when an employee works more than 40 hours in a week. However, certain employees may be exempt from overtime rules if all of the following elements are met:

- 1) The employee is paid a fixed salary (salary basis test);
- 2) The employee's salary is at or above the government-set salary threshold (standard salary level test); and
- 3) The employee holds an executive, administrative, or professional position, as defined by the FLSA.

In addition, "highly compensated employees" performing office or non-manual work may be considered exempt from overtime if they meet the salary basis test; their total annual compensation level is at or above the government-set threshold (a different salary level test than that described above); and they customarily perform one of the duties of an executive, administrative, or professional employee.

The Final Rule imposes the following changes, effective January 1, 2020:

- The "standard salary level" will be raised from \$455 to \$684 per week, which is equivalent to \$35,568 per year for a full year employee.
- The total annual compensation level for "highly compensated employees" is raised from the current \$100,000 to \$107,432 per year.
- Employers may use nondiscretionary bonuses and incentive payments, paid annually at minimum, to satisfy up to ten percent (10%) of the standard salary level or total annual compensation requirement for highly compensated employees.
- Revisions to special salary levels for workers within U.S. territories and within the motion picture industry.

Public agencies should review and evaluate employees who are currently considered exempt to determine if those employees will remain exempt from overtime beginning January 1, 2020, based on the higher salary thresholds. The revisions of the Final Rule will likely result in increased costs to employers as employers will be required to either pay overtime for those employees no

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longer exempt or increase those employees' salaries to meet the new minimum salary levels to continue their "exempt" status. Keep in mind that changes to salary may require further bargaining.

For school district and community college employers, it is important to remember that although the revisions to the Final Rule may affect classified employees who work over 40 hours per week (or eight hours per day, as set forth by California law), certificated employees who meet the "teaching professional" exemption, will remain exempt from overtime.

The DOL has also reaffirmed its intent to update these earnings thresholds more regularly, and therefore it will be important for employers to remain aware and up to date of the applicable threshold amounts and to update its payroll records accordingly.

If you have any questions about these new overtime rules or any other employee compensation issues, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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