

Regulatory Change Makes More Than 4 Million Workers Eligible for Overtime

On May 18, 2016, the Department of Labor unveiled a new overtime rule expected to affect 4.2 million workers currently ineligible for overtime. Many white collar employees with salaries between \$26,660 and \$47,476 will be able to earn overtime as of December 1, 2016. This marks the first update to the salary threshold since 2004.

The Fair Labor Standards Act (“FLSA”) generally requires that employees working more than 40 hours in a week be paid overtime at one and a half times their standard rate, *unless the employee falls within a specific exemption*. Currently, white collar exemptions for executive, administrative, and professional workers only apply to employees who earn at least \$23,600 annually. The new rule more than doubles that number, making individuals who earn less than \$47,476 eligible for overtime as of December 1, 2016.

The new rule will also:

- ◆ Raise the threshold for employees covered by the “highly compensated employee” (“HCE”) exemption from \$100,000 to \$134,004.
- ◆ Automatically update the salary thresholds every three years beginning January 1, 2020. The standard threshold will be raised to the 40th percentile of full-time salaried workers and the HCE threshold will increase to the 90th percentile of full-time salaried workers.
- ◆ Allow up to 10 percent of the salary threshold for non-HCE employees to be met by non-discretionary bonuses, incentive pay, or commissions.

So what should employers do over the next six months to prepare? We recommend they identify now which employees will no longer qualify for an exemption. For each, determine whether salary adjustments to maintain the exemption make sense, and where it does not make sense, decide how best to track the employee’s hours.

It is important to recognize that the new rule makes no change to the “Duties Test” – the duties that executive, administrative and professional employees must have to qualify as “exempt.” We will continue to monitor any updates in this area.

This advisory is for information purposes only, and does not constitute legal advice. Gesmer Updegrove has a team of attorneys who are prepared to help you address wage issues such as these. Feel free to contact Joe LaFerrera (joe.laferrera@gesmer.com), Christine Lee (christine.lee@gesmer.com) or anyone from our employment team at (617) 350-6800 with any questions or concerns you may have.

