

It's Official: Significant Increase in Minimum Salary Requirement for FLSA Exemptions Effective December 1, 2016

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Today, the **Department of Labor** announced changes to the **Fair Labor Standards Act (FLSA)** regulations that will raise the minimum salary level for the executive, administrative and professional employee exemptions to \$913 per week, or \$47,476 per year. The new threshold will become effective on December 1, 2016 and will more than double the current minimum salary level of \$455 per week, or \$23,660 per year.

These regulations have been in the works since **President Obama** directed the Department of Labor (DOL) to update the regulations in 2014. The DOL published a notice of proposed rulemaking on July 6, 2015 calling for an increase of the weekly salary basis to \$970 per week. This proposal resulted in over 270,000 comments. Commentators were concerned about the practical implications of such a steep increase and the lack of exception for not-for-profit organizations and small businesses. While the commentators did succeed in an increased compliance timeline and a reduction in the proposed salary basis, the final rules still present a significant concern for employers in how to deal with the millions of workers who will be impacted by the change. Employees who do not meet the new salary requirements when the final regulations become effective will no longer qualify for the executive, administrative and professional exemptions. Such employees will need to be paid overtime compensation when they work more than 40 hours in a workweek. Notably, the regulations do not make exceptions for not-for-profit organizations or small businesses. The DOL has issued technical guidance to private employers, non-profits and institutions of higher education to assist with compliance with the new rule. Options outlined in the guidance include: raising salaries, paying overtime above a salary, reorganizing workloads/adjusting schedules/spreading work hours, and adjusting wages (reallocating wages between regular wages and overtime so that the total amount paid to the employee remains the same).

Other highlights from the final regulations include the following:

- The minimum salary level will be adjusted every three years to follow the 40th percentile of the lowest wage census region (Northeast, Southeast, Midwest, Southwest, and West. Of the five regions, the Southeast currently has the lowest wages). The first update will take place on January 1, 2020. All updated rates will be published in the Federal Register and the DOL website at least 150 days before their effective date.

- For the first time, employers may be able to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level, as long as those payments are made on a quarterly, or more frequent, basis.
- The total compensation requirement to qualify for the highly compensated employee exemption will increase from \$100,000 per year to \$134,004 per year, which is based on the 90th percentile of earnings for full-time salaried workers in the United States, without regard to regional disparities. This minimum salary level will also be adjusted every three years.
- No changes have been made to the duties tests for any of the exemptions.

After the final regulations are published, employers will have approximately six months to analyze the impact of these regulations on their organizations and make necessary changes to comply with the new requirements. While this is a longer time period than had been anticipated, employers should begin making plans now for how to deal with this significant change to their employees' compensation.

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