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New Overtime Rule: $47,476 Annual Salary Required For White Collar Exemptions

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Exempt white collar workers must be paid an annual salary of at least $47,476 under the Department of Labor's (DOL's) just-released final overtime rule. That salary threshold is more than twice the current salary requirement for the white collar exemptions under the Fair Labor Standards Act (FLSA). Highly compensated employees must be paid at least $134,004 per year (increased from $100,000) to meet that exemption. The new rule is effective December 1, 2016, so employers have about six months to decide what to do with current exempt white collar workers who do not meet the new thresholds.

Salary Level Will Automatically Adjust Every Three Years

In a change from its proposed rule, the DOL will now automatically update the salary levels once every three years. Originally proposed as an annual update, the final rule will raise the standard threshold to the 40th percentile of full-time salaried workers in the lowest-wage Census region. The first adjustment will be posted August 1, 2019, 150 days in advance of its effective date on January 1, 2020.

Duties Tests Are Unchanged

Since 2004, the duties tests for the white collar exemptions have not included a limit on the amount of time that an employee can spend on nonexempt duties before the exemption is lost. Believing that a rise in the salary level will provide an initial bright-line test for the exemptions, the DOL refrained from changing the duties tests.

Nondiscretionary Bonuses, Incentive Payments, and Commissions

In the past, the DOL has not included nondiscretionary bonuses, incentive pay, or commissions when determining whether an employee's salary meets the white collar exemption threshold; it looked only at actual salary or fee payments made to employees. In its final rule, the DOL will allow up to 10 percent of the salary threshold for non-highly compensated employees to be met by non-discretionary bonuses, incentive pay, or commissions. Note that these types of payments must be made on at least a quarterly basis to be included as "salary." The DOL stated that this new policy was included in response to "robust comments" received from the business community which use these forms of pay as part of overall compensation packages for managerial and other exempt employees.

Next Steps

Over the next six months, you need to decide how to address previously exempt employees who no longer meet the salary thresholds. In order to meet the December 1 effective date, use the following checklist of steps to keep your pay practices compliant.

- Examine your payroll records to determine which employees are potentially affected by the changes in the white collar exemptions.
- Review the tasks performed by each white collar exempt employee to determine whether each meets the duties test under an applicable exemption.
- If an employee does not meet the duties tests, you must treat them as non-exempt, regardless of salary.
- Review if you are paying exempt employees on a salary basis, meaning they get paid their salary without reduction due to variations in the quantity or quality of work.
- If an employee otherwise meets an exemption but is not currently paid at or above the new salary levels, decide whether to raise their salary to meet the new threshold or convert them to non-exempt and pay them time and one-half for all hours worked over 40 per week.
- For any employees no longer treated as exempt, inform and train the employee, supervisors, and payroll administrators on proper timekeeping and overtime obligations. If appropriate, make sure such employees work as little overtime as possible, to hold down costs.
- Consider whether the base rate of pay for such employees can be adjusted, so that with overtime pay, the employees earn about the same as before.
- For employees who meet the exemption, implement procedures to update salary levels every three years to keep up with the DOL’s automatic adjustments.

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