

LABOR & EMPLOYMENT ALERT

Department of Labor Issues Final Rule on White-Collar Exemption, Overtime Pay Requirements

By Michael D. Jones and Brittany L. Stepp

The Wage and Hour Division of the U.S. Department of Labor has announced a final rule, effective January 1, 2020, which will modify the “white collar” overtime exemptions applicable to executive, administrative, and professional employees. The Department received over 116,000 comments during the rulemaking process and expects the final rule to result in over 1.3 million employees becoming eligible for overtime compensation. The Department’s final rule will bring the following changes:

- The standard salary level threshold will be increased from \$455 to \$684 per week (\$35,568 annually). This figure represents an increase in the minimum salary over the current rule which was implemented in 2004. However, it is less than the minimum salary of \$913 per week that had been proposed by the Department in 2016, which was eventually invalidated by a federal court in Texas.
- The highly compensated employee (HCE) total annual compensation level will be increased from \$100,000 to \$107,432 per year. HCEs must also receive at least the new standard salary level of \$684 per week. Employers are reminded that the HCE exemption does not apply to state law wage and hour requirements.
- Employers may apply non-discretionary bonuses or similar incentives, including commissions, to satisfy up to 10% of the minimum salary threshold, so long as the payments are made at least annually. The final rule explains that by making this change, the Department seeks to recognize modern compensation practices without undermining the salary basis requirement. Employers must nevertheless exercise significant caution to avoid violating the salary basis regulations when attempting to apply such payments to minimum salary levels. A grace period of one pay period in duration was also included for year-end catch-up payments.
- Unlike the invalidated 2016 Regulations, the final rule does not contain an automatic escalator provision. Instead, the Department proposes to adjust the salary threshold through future notice and comment rulemaking.
- Certain revised minimum salary levels for motion picture industry employees and workers in American Samoa were also included in the final rule.

The final rule will take effect on January 1, 2020. In the interim, employers are encouraged to review existing policies and consult with their labor and employment counsel to ensure compliance with federal and state wage and hour laws.

*This **Labor & Employment Alert** is intended to keep readers current on developments in the law, and is not intended to be legal advice. If you have any questions, please contact authors [Michael D. Jones](mailto:Michael.D.Jones@eckertseamans.com) at 215.851.8461 or mdjones@eckertseamans.com, [Brittany L. Stepp](mailto:Brittany.L.Stepp@eckertseamans.com) at 215.851.8512 or bstepp@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.*