

## U.S. Department of Labor publishes final overtime rule regarding “White Collar” employees

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On May 18, 2016, the United States Department of Labor published the Final Rule amending the provisions regulating “exempt” employee status under the Fair Labor Standards Act (“FLSA”). These amendments significantly raise the salary level requirements for executive, administrative, or professional employees (“EAP”) that must be met to qualify them as “exempt” for purposes of minimum wage and overtime compensation. The Final Rule will be officially published in the Federal Register on May 23, 2016 and the changes will become effective on December 1, 2016.

The FLSA guarantees a minimum wage for all hours worked and limits to 40 hours per week the number of hours an employee can work without additional compensation. Section 13(a)(1) of the FLSA exempts from these minimum wage and overtime pay protections “any employee employed in a bona fide executive, administrative, or professional capacity.”

To be considered exempt under this section, an employee must meet certain minimum requirements related to his primary job duties and, in most instances, must be paid on a salary basis at not less than the minimum amounts specified in the regulation. Some professional employees, however, are not subject to the EAP salary level test, and are considered “exempt” based on their job duties. These include teachers, physicians, dentists, optometrists and lawyers.

With this Final Rule, the Department of Labor more than doubles the standard salary level for “exempt” EAP employees and sets it at \$913 per week, or \$47,476 annually, exclusive of board, lodging or other facilities. This represents a steep increase from the current salary level for employees to be exempt from minimum wage and overtime pay protections, which is set at \$455 per week, or \$23,660 per year. The Department also increased the salary level for highly compensated employees (“HCE”) from \$100,000.00 to \$134,004.00 in total annual compensation.

The Final Rule provides that up to 10 percent of the standard salary requirement may be satisfied with non-discretionary bonuses, incentive payments, and commissions (except for highly compensated employees), provided these forms of compensation are paid at least quarterly.

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The Final Rule further provides for the U.S. Secretary of Labor to update these salary levels starting on January 1, 2020 and every three years thereafter.

No changes were made to the duties tests for the EAP exemption.

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