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1.3 Million More Workers Will Be Eligible for Overtime Pay Under Final DOL Rule



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The U.S. Department of Labor (DOL) yesterday issued its final rule on overtime pay under the Fair Labor Standards Act (FLSA) *increasing* the salary thresholds for workers to be considered “exempt” and opening the door to an estimated 1.3 million workers receiving overtime pay next year.

For the past 15 years, employees generally could be exempt from overtime pay – defined as time and a half compensation for work beyond 40 hours in a given week – if they were paid certain minimum amounts on a “salary basis,” meaning that they are paid a fixed salary not subject to reduction because of variations in the quality or quantity of work.

The first exemption was if their “standard salary level” was at least \$455 per week and they primarily performed bona fide executive, administrative or professional duties (the “duties test”). The second exemption was if they were “highly compensated employees” earning at least \$100,000 per year with a minimal duties test.

Yesterday’s final DOL rule hiked those salary amounts beginning Jan. 1, 2020, meaning employees will be eligible for overtime if, along with satisfying the “duties test”:

- Their “standard salary level” is below \$684 per week (equivalent to \$35,568 per year for a full-year worker), which may include nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10 percent of the standard salary level.

OR

- Their salary falls below the “highly compensated” total annual compensation level of \$107,432 per year, which must be paid at the rate of at least \$684 per week on a salary or fee basis (without regard to the payment of nondiscretionary bonuses and incentive payments).

Other important notes:

- The DOL is not making any changes to the duties test for regular or highly compensated employees.
- The final rule also revises the special salary levels for workers in U.S. territories and in the motion picture industry.

Now is the time to review your employees’ pay and duties to prepare for any changes in exempt status.

For more information or questions about the final ruling on overtime pay by the DOL, please contact a member of Gould & Ratner’s [Human Resources and Employment Law Practice](#).