

## Department of Labor Issues New Rule for Overtime Protections

On May 18, 2016, the U.S. Department of Labor issued its much anticipated Final Rule, updating the regulations governing which "white collar workers" are exempt from the Fair Labor Standard Act's minimum wage and overtime pay requirements. The Final Rule, which becomes effective December 1, 2016, doubles the minimum salary threshold required for the white collar exemptions to apply. The DOL estimates these changes will make approximately 4.2 million additional employees eligible for overtime pay within the first year of the rule taking effect.

### White Collar (EAP) Exemptions

The FLSA exempts certain employees from its minimum wage and overtime pay requirements, including executive, administrative, and professional (EAP) employees. To qualify for any one of these "white collar" EAP exemptions, the employee must (1) be paid a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work performed; (2) be paid more than a specified salary threshold; and (3) primarily perform executive, administrative, or professional duties, as provided in each specific "duties test." The current specified salary threshold, set in 2004, requires that an employee be paid at least \$455 per week (\$23,660 annually).

- **The Final Rule increases the salary threshold to \$913 per week (\$47,476 annually).**
- **The Final Rule amends the current regulations by allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the new salary threshold, provided such payments are made on a quarterly or more frequent basis.**
- **The Final Rule does not change the duties test for any exemption.**

### Highly Compensated Employee (HCE) Exemption

The FLSA also exempts "highly-compensated" workers from its minimum wage and overtime pay requirements. To qualify for this exemption, the employee must (1) have more than a specified annual compensation level, as set by the DOL; and (2) customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee. The current required annual compensation level is \$100,000.

- **The Final Rule increases the specified annual compensation level for the HCE exemption to \$134,004.**

For the HCE exemption to apply under the Final Rule, the employee must be paid a salary of at least \$913 per week, excluding bonuses and other compensation. The remainder of the compensation necessary to bring the employee up to the \$134,004 compensation level may be in the form of a salary, bonuses, commissions or other non-discretionary wage payments.

### **Automatic Updating of Minimum Salary Levels**

Under the Final Rule, the minimum salary threshold and compensation levels for the EAP and HCE exemptions will automatically update every three years. The EAP salary level will reflect the 40<sup>th</sup> percentile of earnings for full-time salaried workers in the lowest wage Census Region – currently the South. The HCE compensation level will be equivalent to the 90<sup>th</sup> percentile of earnings of full-time salaried workers nationally. The first automatic increases will take effect January 1, 2020.

### **Time Limited Non-Enforcement Policy for a Subset of Medicaid-Funded Providers**

With the Final Rule, the DOL also announced that it is implementing a limited non-enforcement policy for providers of Medicaid-funded services for individuals with intellectual or developmental disabilities in residential homes and facilities with 15 or fewer beds. This non-enforcement period will last from December 1, 2016 to March 17, 2019. During this non-enforcement period such providers are still subject to the current EAP salary (\$455/week) and HCE compensation level (\$100,000), as well as the applicable duties tests.

### **Compliance**

The Final Rule takes effect December 1, 2016. The increases to the salary threshold and compensation levels as required by the Final Rule will be effective on that date.

Please keep in mind that the FLSA provides minimum standards, and does not preempt a state from establishing more protective standards. If a state has or establishes a more protective standard than the FLSA, the higher standard applies in that state.

### **More Information**

Please contact any member of the Cohen & Grigsby Labor & Employment Group at 412.297.4900 if you have any questions regarding this information. To receive future bulletins and news alerts, please send an e-mail to [bulletins@cohenlaw.com](mailto:bulletins@cohenlaw.com).

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