

Client Alert

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As the DOL More Than Doubles the Minimum Salary for FLSA White-Collar Exemptions, Employers and Financial Sponsors Are Advised to Take a Close Look at Employee Compensation and Classifications

Updated FLSA Regulations Take Effect December 1, 2016

On May 18, 2016, President Obama and DOL Secretary Thomas Perez announced the long-awaited publication of the DOL's Final Rule updating the FLSA's overtime regulations. The Final Rule will be published on May 23, 2016 and takes effect on December 1, 2016.

The Final Rule's primary focus is on increasing the salary and compensation thresholds required for employees to meet certain exemptions from the FLSA's overtime provisions (which generally require that employers pay overtime compensation to employees who work more than 40 hours in a single workweek). Specifically, the Final Rule focuses on the executive, administrative, and professional exemptions—the so-called “white-collar” exemptions—by:

- ***Increasing the standard salary level to \$913 per week or \$47,476 annually (up from \$455 per week or \$23,660 annually).***

This amount represents the 40th percentile of earnings for full-time, salaried workers in the lowest-wage Census Region. With respect to exempt computer employees in particular, those paid on a salary basis must be paid at the increased salary level to maintain their exempt status; however, those paid on an hourly basis still may be paid \$27.63 per hour under a separate, unchanged regulation.

- ***Increasing the total annual compensation requirement for highly compensated employees to \$134,004 (up from \$100,000).***

This amount represents the 90th percentile of annual earnings for full-time, salaried workers nationally.

- ***Implementing a mechanism for future updates to the salary and compensation levels every three years.***

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The first of the three-year updates will begin on January 1, 2020. Each update will automatically set new dollar thresholds for both the standard salary level and the highly compensated employee total annual compensation requirement to represent the 40th and 90th earning percentiles, respectively.

The Final Rule also allows employers to use non-discretionary bonuses, incentive payments, and commissions to satisfy up to 10 percent of the standard salary level, as long as these payments are made at least quarterly.

Impact on Employers and Financial Sponsors

Although the Final Rule sets a slightly lower threshold for the standard salary level than originally proposed (\$47,476 annually instead of \$50,440), the Final Rule is expected to impact more than four million exempt workers nationwide who earn between the current standard salary level of \$23,660 and the increased level of \$47,476.

With the vast number of workers affected, there are, in turn, far-reaching implications for employers and financial sponsors. Employers will face not only increased labor costs, but also greater administrative burdens in evaluating whether and which employees to reclassify as non-exempt, evaluating whether to raise salaries for certain employees to maintain the exemption, and ensuring the efficacy of time-tracking systems for a potentially broader class of non-exempt employees. Financial sponsors, too, will be impacted by the increased costs and exposure to FLSA liability facing their borrower clients or acquisition targets.

For more detailed information on how the Final Rule will shape business practices for employers and financial sponsors, in addition to a specific analysis of the impact of the Final Rule on M&A activity, please see our [previous article](#) on the proposed regulation changes. We also advise all employers and financial sponsors to contact their King & Spalding attorneys for an evaluation of how the Final Rule will affect their businesses, portfolio companies, and borrower clients, and for strategies to prevent the Final Rule from becoming more costly than it has to be.

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