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DOL ANNOUNCES FINAL REGULATIONS FOR THE WHITE COLLAR MINIMUM WAGE AND OVERTIME EXEMPTIONS

I. The New Minimum Salary Level Will Be \$913 Weekly Starting December 1, 2016.

On May 16, 2016, DOL announced its final regulations for the white collar minimum wage and overtime exemptions. The new salary levels will take effect **December 1, 2016**. The new salary minimum salary level for the white collar exemptions will increase from \$455 weekly to **\$913 weekly or \$47,476 annually**. This is a slight decrease from the proposed amount of \$970 per week. The proposed regulation would have set the minimum salary level at the 40th percentile of all full-time salaried workers nationally. The final rule sets the minimum salary level at the 40th percentile of full-time workers in the lowest-wage Census region (currently the South).

The minimum salary level will be automatically adjusted every three years to maintain the minimum salary level at the 40th percentile of all full-time salaried workers in the lowest-wage Census region. The first adjustment will be made effective January 1, 2020. The final rule also provides that up to 10% of the minimum salary level can come from non-discretionary bonuses, incentive payments, or commissions, as long as they are paid at least quarterly. This is a change from the existing regulations, which do not allow bonuses, incentive payments, or commissions to be considered as part of the minimum salary.

II. The New Minimum Salary for Highly Compensated Employees Increases to \$134,004 Starting December 1, 2016.

The minimum salary for the **highly compensated employee** test will increase from \$100,000 per year to **\$134,004**, an increase from the proposed \$122,148. The rate is still set at the 90th percentile of all full-time salaried workers nationally, but has increased because a new calculation was performed for 2016. The minimum salary level for the highly compensated employee test will also be automatically adjusted every three years to keep the salary level equal to the 90th percentile of all full-time salaried workers nationally.

III. There Are No Changes to the Exempt Duties Test.

In its Notice of Proposed Rulemaking, DOL requested comments on whether the duties test for the white collar exemptions needed to be changed. It did not propose any specific changes. The final rule does not make any changes to the exempt duties test, only to the salary level.

IV. Employers Should Plan for the December 1, 2016 Effective Date.

Because the new minimum salary levels will not take effect until December 1, 2016, employers have approximately six months to plan for the implementation of the new wage rates. Employers should review any positions that they currently have classified as exempt under the white collar exemptions. Review the duties tests to ensure that the person satisfies the duties tests. If the employee satisfies the duties tests but makes less than \$47,476 per year, the company should review whether the position generally requires more than 40 hours per week. If so, the company needs to determine whether to increase the person's salary when the final regulations are implemented to maintain their overtime exempt status or whether to make the position non-exempt and track hours worked and pay overtime. Employers have many options to come into compliance with the new minimum salary levels by December 1, 2016.

- (1) Companies can increase the employee's salary to satisfy the minimum salary level. Keep in mind that under the final regulations, up to 10% of the salary can be non-discretionary bonus, incentive payment, or commission paid at least quarterly.
- (2) Companies can reclassify positions as non-exempt and pay overtime for work over 40 hours per week. Employees can either be paid hourly or be paid as salaried non-exempt and receive overtime in addition to their base salary, as applicable.
- (3) Companies can reclassify positions as non-exempt but limit the amount of overtime that an employee can work.
- (4) If an employee regularly works overtime but the company does not want to increase the salary to the minimum exempt level, the company can reduce the base salary and then pay the additional overtime compensation.
- (5) Companies should consider whether the duties of the position can be distributed between other employees to minimize overtime.

Because the salary level will automatically adjust every three years, employers should keep this in mind when planning future wage or salary costs.

Companies should also plan ahead for how they will communicate with employees whose classification and salary are being changed based on the new rule.



Julie Pace's practice handles employment law, handbooks, drug and alcohol policies, I-9 and E-Verify compliance, OSHA, independent contractor and alleged misclassification issues with DES and other government agencies, and defends claims of sexual harassment, employment discrimination, retaliation, whistleblower, and wrongful discharge, and against charges by the EEOC or ACRD. She handles matters involving OSHA, ICE, OFCCP, DOL, NLRB, ADA, FMLA, ERISA, ACA, Davis-Bacon, FAR, SCA, government contracts, and wage and hour laws. She regularly provides training to companies and assists with investigations. Julie can be reached at 602.322.4046 or jp pace@cavanaghlaw.com