

Department of Labor Announces Final Overtime Rule

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The Department of Labor (DOL) has announced the final version of a rule, proposed in March 2019, which will modify the "white collar" exemptions from overtime pay under the Fair Labor Standards Act (FLSA). While the rule will not change the job duties tests under current regulations, it will increase the minimum salary required for an employee to qualify for most exemptions (administrative, executive and professional) from the current level of \$455 per week (\$23,660 per year) to \$684 per week (\$35,568 per year). This increase is slightly more than the amount proposed earlier this year, but substantially less than the 2016 proposal of \$913 per week (\$47,476 per year).

The final rule allows employers to include non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the standard salary level. This is designed to recognize evolving pay practices of employers. The rule allows an annual "catch-up" payment if an employee does not earn enough in non-discretionary bonus or incentive payments in a given year (52-week period).

In addition to increasing the standard salary level for white collar employees, the final rule also updates the total annual compensation requirement for "highly compensated employees." Currently, an employee who is guaranteed total annual compensation of at least \$100,000, and who customarily and regularly performs one or more of the exempt duties or responsibilities of an executive, administrative or professional employee, is exempt from overtime requirements. The new rule increases the salary threshold for highly compensated employees to \$107,432 per year. This change is far less than the previously proposed threshold of \$147,414.

The final rule also rescinds the overtime rule issued 2016, which was invalidated by the Federal District Court in the Eastern District of Texas. An appeal of that decision was pending in the Fifth Circuit Court of Appeals, but was held in abeyance pending the issuance of the new version of the rule. Now that a final rule has been announced by the DOL, the 2016 version will not go into effect.

The final rule will go into effect on January 1, 2020. Recognizing that no changes have been made to these salary thresholds since 2004, the DOL has stated that it intends to make updates to its overtime thresholds more frequently than it has in the past, but the rule does not include a formula for doing so on any regular basis nor will it automatically increase.

For further guidance or more information on FLSA exemptions, or the changes which will be going into effect, please contact any of the authors or your Miller Canfield attorney.