

Legislative Blast **November 2016***

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U.S. DEPARTMENT OF LABOR'S "OVERTIME RULE" UNDER THE FAIR LABOR STANDARDS ACT (FLSA) TAKES EFFECT ON OR BEFORE DECEMBER 1, 2016

The United States Department of Labor issued a Final Rule this year updating its regulations that permit exemptions from the payment of overtime to executive, administrative and professional employees (the so-called "white collar exemptions"). The Rule's effective date is December 1, 2016. In order to obtain a white collar exemption under the FLSA Rule, employers must meet a higher minimum salary level for workweeks that include December 1, 2016, notwithstanding the outcome of the nation's November 8, 2016 election for President of the United States. Changes to the Rule are likely to occur in 2017 after President-Elect Donald J. Trump takes office.

Key Provisions of the Final Rule:

The Final Rule focuses primarily on updating the salary and compensation levels needed for executive, administrative and professional workers to be exempt. Specifically, the FLSA Rule:

- Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South (\$913 per week; \$47,476 annually for a full-year worker);
- Sets the total annual compensation requirement for Highly Compensated Employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally (\$134,004);
- Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles; and
- Amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.

Accordingly, effective December 1, 2016 the standard salary level increases from \$455 to \$913 per week, and the HCE total annual compensation requirement increases from \$100,000 to \$134,004 per year. **Although the Final Rule changed the salary level and salary basis tests, the Rule made no changes to the duties test that is required for exemption under the regulations.**

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