



# The Wait is Over - Department of Labor Issues Final Rule That Significantly Expands Employees Eligible for Overtime

Client Advisories

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Earlier this week, President Obama and the U.S. Department of Labor announced long-awaited revisions to overtime regulations under federal law. The most important change will allow millions of workers to receive overtime pay because the DOL has raised the minimum salary that employees must receive before they can ever be exempt from overtime. Under the revised regulations, which go into effect on December 1, 2016, employees must earn at least \$913 per week before they can qualify for any overtime exemption. This equates to an annual salary of \$47,476, which is more than double the current figure. The end result is that every employer needs to examine the salaries being paid to exempt employees to see if they still can avoid paying them overtime.

As you may recall, [back in March 2014](#), A&G notified you that President Obama signed a memorandum directing the Secretary of Labor to revise what he called the “outdated” overtime pay regulations under the Fair Labor Standards Act (“FLSA”). In June 2015, the Department of Labor released proposed changes to the so-called “white collar” overtime exemption regulations, which allow certain employees to be exempt from any overtime based upon their job duties. These white collar exemptions are the reason why most managers, administrators and professional employees are paid a flat salary and are not entitled to any overtime pay under the law. The comment period ended on September 4, 2015, and while everyone knew that changes were inevitable, ever since then, there has been a great amount of speculation as to exactly what changes would make it into the final rule. Well, the wait is over.

The key revisions to the white collar overtime exemptions are:

- Salary Level Test: The minimum weekly salary before any employee can be “white collar” is being **increased from \$455/week to \$913/week**. This means that the annual minimum salary has been raised from \$23,660 to \$47,476. So, even if an employee is clearly performing a job which would make him/her exempt (e.g., a supervisor, accountant, or office administrator), unless the employee earns at least \$913/week, that employee will be entitled to overtime pay.

- The final rule will also adjust this figure upward automatically every three (3) years, based upon Census data as to employee salaries.
- Employers now will be permitted to use nondiscretionary bonuses and incentive pay (i.e., commissions) to satisfy up to ten percent (10%) of an employee's salary level, for determining the employee's salary basis.
- Regarding a less-frequently used exemption, there has been an increase in the total annual compensation for highly compensated employees from \$100,000 to \$134,000. This raises the threshold before certain very highly paid "hourly" workers are cut off from receiving overtime.

What does this mean for employers? Plan ahead! Employers need to immediately begin to evaluate their workforce to determine whether any exempt employees will need to be reclassified as non-exempt, or have their salaries increased. This should include a cost-benefit analysis to determine what would be more financially economical, i.e., raising the employee's salary to exceed the \$913/\$47,476 minimum or deciding instead to pay them overtime.

From prior alerts, we all know that the Department of Labor, at both the federal and state levels, are aggressively enforcing the wage and hour laws. Accordingly, this is also now a good time for employers to:

- Begin requiring all employees - particularly those in the "gray" area of exemption -- to maintain time records. Employers may wish to start tracking employee hours between now and December 1, 2016 to determine which is the most cost effective route (i.e., a raise or pay overtime).
- Ensure that employees categorized as exempt, are properly exempt - not only under the salary level test, but also under the salary basis and duties tests.

If you have any questions about this advisory or other labor and employment matter, please contact any member of **Archer's Labor & Employment Law Group** in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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