



U.S. Department of Labor Issues Final Rule That Expands Employees Eligible for Overtime

Client Advisories

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The Trump Administration on Tuesday issued its final rule to revise overtime regulations under federal law, so as to make more employees eligible for overtime. The most important change will allow an estimated 1.3 million additional workers to receive overtime pay. This final rule will become effective on January 1, 2020, and will mean that employees must earn at least \$684 per week (which equates to \$35,568 on an annual basis) before they can be exempt from overtime.

The federal overtime regulations require employees who work more than 40 hours in a payweek to receive overtime pay, at one-and-one-half times their hourly rate. That said, there are numerous employees who are exempt from ever receiving overtime, based on their job positions. Some of the most common examples are managers, professionals and higher-level administrative employees. However, even those "exempt" employees are still entitled to overtime - under current law - if they earn less than \$455 per week (which equates to \$23,660 annually). Given that the \$455 weekly threshold is only slight above the poverty limit, this threshold has had little recent impact on otherwise exempt employees earning overtime.

This new rule will raise that threshold to \$684 per week, or an employee with an annual salary of \$35,568. So, no employees will be exempt from overtime, regardless of their job position, unless they earn at least those pay amounts. This rule would be the first revision to the so-called overtime threshold since 2004. But, it would not be the first attempt since 2004. **The Obama Administration issued a final rule to raise the threshold to \$913 per week (\$47,476 annually).** Yet, that proposed hike was challenged successfully in Court **in late November 2016**, and the Trump Administration subsequently dropped that near doubling of the salary threshold.

As noted above, the new \$684/\$35,569 is set to go into effect on January 1, 2020, unless there is a legal challenge. All expectations are that the new threshold will either not be seriously challenged, or will be upheld because it is a much less drastic increase than the 2016 Obama Administration proposal. The new regulations also have some less consequential revisions, including raising the highly compensated employee exemption from

\$100,000 annually to \$107,432, and allowing the use of a portion of non-discretionary bonuses and incentive payments (such as commissions) to count towards the new salary threshold.

The bottom line for employers is that every employer needs to examine the salaries being paid to exempt employees to see if they still can avoid paying them overtime. If employers are paying any exempt employees less than \$684 per week, or \$35,569 annually, the employer must either: (1) increase the employees' pay to above that threshold, or (2) reclassify the employee as non-exempt and allow them to earn overtime. 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 \$684/\$35,569 minimum or deciding instead to pay them overtime.

If you have any questions about this advisory or other labor and employment matter, please contact any member of Archer & Greiner's **Labor and Employment 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, in Harrisburg, Pa. at (717) 686-4109 or in Wilmington, Del., at (302) 777-4350.

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