

Department of Labor Raises FLSA Exemption Thresholds

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This week, the United States Department of Labor (“DOL”) issued a final rule raising the salary thresholds that certain workers must meet in order to be exempt from the overtime requirements of the Fair Labor Standards Act (“FLSA”). Starting January 1, 2020, all executive, administrative, and professional (“EAP”) workers must earn at least \$35,568 per year, or \$684 per week (up from \$455/week), to be exempt from the FLSA overtime requirements. Additionally, all “highly compensated employees” must earn at least \$107,432 annually (up from \$100,000). The duties tests that govern these exemptions remain unchanged by the final rule. Though the DOL had considered instituting cost-of-living-based salary threshold increases every four years going forward, it ultimately decided not to do so.

The final rule brings at least a temporary end to a saga that began in 2014, when the Obama DOL proposed and ultimately issued a final rule that would have raised the salary thresholds far higher (to \$47,476 for EAP and \$134,004 for highly compensated employees). That effort was ultimately thwarted by the issuance of a nationwide injunction and the election of a Republican Administration.

The new rule is unlikely to impact most employers, as it only requires adjustments for (i) exempt EAP employees earning less than \$35,568/year in annual salary (estimated by the DOL at 1.2 million workers), and (ii) exempt “highly compensated” employees earning more than the current \$100,000 minimum, but less than \$107,432 (estimated at 101,800 workers).

While the DOL press release announcing the final rule touts that these changes will “put overtime pay into the pockets of more than a million working Americans,” reality is more nuanced. Instead, employers who employ exempt workers earning less than the new thresholds can respond in one of two ways: *first*, they can raise impacted employees’ salaries up to the new thresholds and either absorb the additional cost or pay for it by reducing headcount; *second*, they can reclassify impacted employees to non-exempt, making them overtime-eligible under the FLSA, and attempt to control overtime expenses by increasing headcount and/or limiting the amount of overtime worked.

Employers should analyze their workforces to determine if they have employees impacted by the new salary thresholds and, if they do, make a business decision regarding how to best comply with the new rule by January 1, 2020. As before, employers should be aware of higher state and local thresholds that may apply.

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