



## **DOL finalizes new overtime rule for white-collar exemptions: 1.3 million additional workers will be eligible for overtime pay starting January 1**

September 26, 2019

On September 24, 2019, the United States Department of Labor (DOL) issued its [final rule](#) revising the overtime exemptions that cover employees designated as executive, administrative and professional – the so-called “white-collar exemptions” under the Fair Labor Standards Act (FLSA). The updated white-collar exemptions will take effect January 1, 2020, and will expand overtime obligations for an estimated 1.3 million workers.

Under the current exemptions, which have been in effect since 2004, one part of the exemption test requires that the employee earn an annual salary of at least \$23,660 (\$455 per week); otherwise, even if the duties test for the exemption is met, the employee fails to meet the exemption and would be entitled to overtime pay for working in excess of 40 hours per week. In 2014, and again in 2016, the DOL attempted to nearly double this salary threshold. However, these actions were blocked through court challenges.

Under the new regulation, the salary threshold for white-collar employees will increase to \$35,568 (\$684 per week). Employees making less than that figure and working over 40 hours per week are entitled to overtime at one and one-half times their hourly rate.

The final rule also contains some other key provisions:

- The exemption referred to as “highly compensated employees” increases the current threshold of \$100,000 per year of

salary to \$107,432 per year (notably less than the \$147,414 threshold in the DOL's prior [proposed rule](#)).

- Employers may include non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level.
- There are no changes to the duties test, which determines whether employees fall within each of the white-collar exemptions.

The DOL also reaffirmed its intent to update salary thresholds more regularly through notice-and-comment rulemaking, although no fixed schedule of future adjustments or automatic updates was included in the rule.

Employers are advised to prepare for this change by:

- Reviewing salary matrices, particularly for employees whose salaries are between the current and pending thresholds
- Factoring salary changes into the coming year's fiscal budget
- Adjusting pay practices and payroll to timely conform to the effective date of the new requirements
- Developing a communication strategy, especially for employees whose salaries an employer may decide not to increase, opting instead to treat the employee as an overtime-eligible, non-exempt employee, so those employees do not perceive this change as a demotion
- Reviewing employees' duties and job descriptions to make sure employees are properly classified as exempt or non-exempt

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