

U.S. Department of Labor Publishes New Overtime Regulations

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On May 18, 2016, the United States Department of Labor ("DOL") announced the publication of the DOL's final rule updating the overtime regulations, which will extend overtime pay protections to potentially millions of workers.

In its key provisions, the Final Rule:

1. Sets the threshold standard salary level for exempt employees at \$47,476 annually, or \$913 a week, through December 31, 2019. This is a substantial increase from the previous threshold of \$23,660 annually or \$455 a week.
2. Sets the total annual compensation requirement for highly compensated employees ("HCE") subject to a minimal duties test at \$134,004, through December 31, 2019. This is also a substantial increase from the previous \$100,000 requirement.
3. Establishes automatic updates every three years to maintain the compensation levels at the required percentages (for the standard exempt salary, the 40th percentile of earning of full-time salaried workers in the lowest wage Census Region, and, for the HCE, the 90th percentile of full-time salaried workers nationally).
4. Amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the new standard salary level.

The effective date of the Final Rule is December 1, 2016. The initial increases to the standard threshold level and the total annual compensation requirement for HCE will be effective on that date. The automatic updates to the thresholds will occur every three years beginning on January 1, 2020.

It is important for employers to take the time to review the classification of employees to ensure compliance with the new rules. If current exempt employees do not meet the new salary threshold, employers will need to either (1) increase the employee's salary to meet the threshold, or (2) reclassify the employee as non-exempt and pay overtime for any hours worked in excess of 40 hours. There are a variety of ways to meet this overtime pay requirement for salaried, non-exempt employees. Employers can also make other changes to manage the costs associated with these changes. It will be important for employers to understand what hours are considered "hours worked" requiring compensation. Finally, employers must be mindful of recordkeeping obligations

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for non-exempt employees.

Attorneys at Brooks Pierce frequently counsel clients concerning all manner of labor and employment matters. Our attorneys advise companies concerning wage and hour laws, employee discipline, labor unions, nondiscrimination, and employee benefits, among other issues. Our team is also widely experienced in employment litigation, handling discrimination claims, NDAs and non-compete agreements, employment agreements, and whistleblower claims. For more information, please contact any of the attorneys linked below.

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