

May 2016

The New FLSA Overtime Rule: No Major Surprises Here

On May 18, 2016, the United States Department of Labor (U.S. DOL) announced the publication of its highly anticipated [Final Rule](#) updating the overtime exemption regulations pertaining to the Fair Labor Standards Act (FLSA). Although the Final Rule increases the minimum salary required to exempt executive, administrative, and professional employees from the FLSA's minimum wage and overtime pay protections and the minimum compensation level required to exempt highly compensated employees, there were no major surprises.

The most significant change is the near doubling of the minimum salary required for the exemption of executive, administrative, and professional employees, which has been increased from \$455 to \$913 per week (or \$23,660 to \$47,476 annually); this is \$57 lower than the increase noted in the U.S. DOL's [Proposed Rule](#) (July 6, 2015). The magnitude of this change has put a national spotlight on wage and hour issues, and employers would be well served to consider conducting an internal audit of their compensation practices and any related documentation or policies (for example, offer letters, employee handbooks, etc.) to ensure that they are prepared for the Final Rule's December 1, 2016 effective date.

FIVE KEY TAKEAWAYS

1. The Final Rule sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage census region, currently the South (\$913 per week; \$47,476 annually for a full-year worker).
2. The Final Rule sets the total annual compensation requirement for highly compensated employees to the annual equivalent of the 90th percentile of full-time salaried workers nationally (currently \$134,004).
3. The Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level, provided these payments are made on a quarterly or more frequent basis. This is the first time that this will be permissible under the FLSA.
4. The Final Rule takes effect on December 1, 2016.
5. Subsequent adjustments to the salary thresholds will occur automatically every three years as of January 1, 2020.

The U.S. DOL has provided the [following chart](#), which compares the current regulations, the Proposed Rule (July 6, 2015), and the Final Rule:

	Current regulations (2004 until effective date of Final Rule, 2016)	NPRM	Final Rule
Salary Level	\$455 weekly	\$970 weekly (if finalized as proposed) 40th percentile of full-time salaried workers nationally	\$913 weekly 40th percentile of full-time salaried workers in the lowest-wage census region (currently the South)
HCE Total Annual Compensation Level	\$100,000 annually	\$122,148 90th percentile of full-time salaried workers nationally	\$134,004 90th percentile of full-time salaried workers nationally
Automatic Adjusting	None	Annually, with requests for comment on a CPI (Consumer Price Index) or percentile basis.	Every 3 years, maintaining the standard salary level at the 40th percentile of full-time salaried workers in the lowest-wage census region, and the HCE total annual compensation level at the 90th percentile of full-time salaried workers nationally.
Bonuses	No provision to court nondiscretionary bonuses and commissions toward the standard salary level.	Request for comment on counting nondiscretionary bonuses and commissions toward standard salary level.	Up to 10% of standard salary level can come from non-discretionary bonuses, incentive payments, and commissions, paid at least quarterly.
Standard Duties Test	See WHD Fact Sheet #17A for a description of EAP duties.	No specific changes proposed to the standard duties test. Request for comment on whether the duties tests are working as intended.	No changes to the standard duties test.

For more information or if you have questions about how the issues raised in this update affect your policies, practices, or other compliance efforts, please contact one of the following lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#):

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