New FLSA Regulations Increase Number of Workers Eligible for Overtime Pay

BY ROBERT G. YOUNG • OCTOBER 28, 2019

On September 24, 2019, the U.S. Department of Labor issued its final rule updating the earnings threshold to qualify an employee as "exempt," and therefore ineligible for overtime, under the Fair Labor Standards Act (FLSA). As many may recall, in the waning days of the Obama Administration, a substantial increase in the salary threshold was set to go into effect, but then was blocked by the courts. The current administration decided to go back to the drawing board and come up with new standards.

Starting January 1, 2020, an employee must earn a salary of at least $684 per week ($35,568 on an annualized basis) to qualify as exempt, an increase from the current salary level of $455 per week. In addition, the salary threshold for the "highly compensated employee" exemption will increase from its current level of $100,000 to $107,432 per year. Employers may use nondiscretionary bonuses and commissions to satisfy up to 10 percent of the required salary level.

Of course, meeting the required salary level is only one piece of the FLSA exemption requirement. The new rule does not impact the duties test that employers also must meet in order to exempt employees from the FLSA's overtime requirements.

Client Tip: Institutions should review their payroll practices to ensure employees it classifies as exempt will meet the new salary threshold. In addition, auditing the duties performed by exempt employees to ensure that they satisfy the FLSA's duties test would be good practice.

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