

DOL (Finally) Announces New Overtime Rule To Be Effective Jan. 1, 2020

by Grant T. Collins - Tuesday, September 24, 2019



The Department of Labor (“DOL”) just announced a **Final Rule** raising the salary threshold for minimum wage and overtime exemption under the federal Fair Labor Standards Act (“FLSA”) from \$455 to \$684 per week (or from \$23,660 to \$35,568 annually).

In addition, the Final Rule allows employers, for the first time, to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the newly raised salary level.

The Final Rule goes into effect on **January 1, 2020**. The DOL estimates that the Final Rule will make an additional 1.3 million workers eligible for overtime pay.

Nuts and Bolts of the Final Rule

The Final Rule:

? Increases the minimum salary for executive, administrative, and professional exemptions from the FLSA’s minimum wage and overtime pay requirements from \$455 per week (equivalent to \$23,660 for a full-year) to \$684 per week (equivalent to \$35,568 per year for a full-year worker). The regulations make clear that an employer satisfies the \$684 per week

standard by paying a biweekly salary of not less than \$1,368, a semimonthly salary of not less than \$1,482, or a monthly salary of not less than \$2,964.

? Increases the total annual compensation level for “highly compensated employees” or “HCE’s” from \$100,000 to \$107,432 per year;

? Allows, for the first time, employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10% of the standard salary level; and

? Revises the special salary levels for workers in U.S. territories and in the motion picture industry.

The Final Rule does not change any of the “duties tests” that must be met to claim the executive, administrative, or professional exemptions under the FLSA. It also **does not** include automatic updates, which had been proposed under the Obama administration’s proposed changes in 2016.

Court Challenges Ahead?

Employee advocacy groups have been promising a court fight ever since the Trump administration hinted that they would adopt salary thresholds lower than what President Obama’s DOL proposed (\$913 weekly; \$47,476 annually). Interestingly, the newly proposed threshold of \$684 per week falls exactly in the middle of the current exemption rate (\$455) and the Obama proposal (\$913).

Bottom Line

The impending legal challenges may delay the Jan. 1 2020 implementation date, and of course 2020 is a presidential election year so uncertainty remains. Still, employers should begin making plans to address the likelihood that employees soon will need to be paid a salary of at least \$684 per week (or \$35,568 annually) to be exempt under the FLSA.