

DOL RAISES MINIMUM SALARY REQUIREMENTS FOR WHITE-COLLAR EXEMPTIONS

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The Department of Labor (DOL) has issued its long-anticipated final rule updating the minimum salary requirements for white-collar workers, beginning the countdown for employer compliance. The final rule largely follows the DOL's proposal with a few minor exceptions.

Effective December 1, 2016, the minimum salary for the white-collar exemptions subject to the salary basis test will be \$913/week or \$47,476 annually. In a slight variation on the initial proposal, this number is based on the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (currently the South) rather than the same percentile for the entire country.

The minimum salary for workers treated as exempt under the highly compensated employee exemption will be raised to the 90th percentile of full-time salaried workers nationally, currently \$134,004. The DOL explained it used the national marker for this exemption to avoid including employees it does not intend to cover in high-wage areas like New York and Los Angeles, such as secretaries, who might otherwise be included in the exemption.

Both salary minimums will be automatically adjusted to keep pace with the 40th percentile and 90th percentile, respectively. The adjustments will take place every three years (rather than annually as initially proposed) beginning on January 1, 2020. The final rule also permits employers to include nondiscretionary bonuses, incentives, and commissions toward up to 10 percent of the required salary level for these exemptions, as long as those amounts are paid on at least a quarterly basis.

The DOL made no changes to the standard duties tests for any of these exemptions.

The DOL increased its estimates of the number of workers it projects will be impacted by the final rule as well as the projected costs for employer implementation. The DOL estimates that in FY2017, 22.5 million salaried workers may be impacted by the final rule, and approximately 4.2 million employees who earn at least the current salary minimum (which has remained \$455/week since 2004) but less than \$913/week will become eligible for overtime payments unless their employers take action to raise their salaries to at least the new minimum.

The DOL also indicated that it believes approximately 5.7 million white-collar workers are currently misclassified as exempt and earn less than the new minimum salary. The DOL expects employers' analysis of these employees' status will be simplified by the higher salary requirement.

The implementation date is just over six months away, giving employers a window of opportunity to assess their wage and hour practices, particularly as they relate to classification of exempt workers, and to make adjustments accordingly. Given the large number of employees the DOL estimates are currently misclassified, employers are well-advised to look not only at the salaries paid to their exempt workers but also at how they would meet their

burden of proof on the duties tests if exempt status were challenged. Such a review, while a burden in many respects, is also an opportunity for employers to correct any problematic classifications that may have lingered in their organizations without creating concerns in employees about why the review of their classifications is being done.

Click [here](#) to view our recent webinar on this topic titled "Leveraging the USDOL's Proposed White Collar Exemption Changes: What Employers Should Be Doing Now." Watch for our follow-up webinar and industry-specific comments coming soon!

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