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DOL Issues New Overtime Payment Rules

Legislative Alert 11-2016 May 19, 2016

Highlights:	<ul style="list-style-type: none">▪ The salary level for administrative, executive and professional employee exemptions will increase to \$47,476.▪ The salary level for the highly compensated employee exemption will increase to \$134,004.▪ The final rule does not change the duties test for white collar exemptions.	Important Dates:	<ul style="list-style-type: none">▪ May 18, 2016 The DOL announced a final rule updating white collar exemption qualification requirements.▪ Dec. 1, 2016 The final rule becomes effective. Employers are required to comply with the final rule by this date.
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Overview

On **May 18, 2016**, the U.S. Department of Labor (DOL) announced a [final rule](#) regarding overtime wage payment qualifications for the "white collar exemptions" under the Fair Labor Standards Act (FLSA).

The final rule increases the salary an employee must be paid in order to qualify for a white collar exemption. The required salary level is increased to **\$47,476** per year and will be automatically updated every three years. The final rule does not modify the duties test employees must meet to qualify for a white collar exemption.

Employers will need to comply with this rule by **Dec. 1, 2016**.

Action Steps

- Employers must become familiar with the new rule and identify which employees will be affected. Employers should reclassify employees as exempt or non-exempt, as necessary, by **Dec. 1, 2016**.
- Employers should also consider communicating any work schedule changes to affected employees before the date mentioned above.
- Finally, employers should evaluate whether implementing new timekeeping practices and training for managers and supervisors on the new requirements is necessary.

FLSA White Collar Exemptions

The FLSA establishes minimum and overtime wage payment protections for most workers in the United States. However, the FLSA also offers a range of minimum wage and overtime exemptions for certain workers. The white collar exemptions are minimum wage and overtime pay exemptions available to certain administrative, professional, outside sales, computer and highly compensated employees.

To qualify for the white collar exemption, an employee must meet a **salary basis test**, a **salary level test** and a **duties test**. An employee must meet all three tests in order to be exempt from FLSA minimum wage or overtime pay requirements.

- The salary basis test is used to make sure the employee is paid a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work.
- The salary level test is used to ensure that the employee meets a minimum specified amount to qualify for the exemption. This salary threshold provides employers with an objective and efficient way to determine whether an employee qualifies for a white collar exemption.
- The duties test requires that the employee's job duties conform to executive, administrative or professional duties, as defined by law. This analysis requires a more thorough evaluation of whether an employee can be classified in one of the categories mentioned above (administrative, professional, outside sales, computer and highly compensated employee)

Higher Salary Threshold Requirement

The final rule increases the minimum salary level of \$455 per week (\$23,660 per year) to **\$913 per week** or \$47,476 per year. The new salary level represents the 40th percentile of wages earned by workers in the lowest-wage census region in the United States (currently the South) for a full-year worker.

The final rule also increases the \$100,000 salary level for highly compensated individuals to **\$134,004 per year**—the 90th percentile of wages earned by full-time workers across the entire United States.

These higher salary levels will be updated every three years to maintain the salary level at their corresponding 40th or 90th percentiles. The first automatic rate update is expected by Jan. 1, 2020. The DOL will publish updated rates in the [Federal Register](#) and on the Wage and Hour Division's [website](#) at least 150 days before their effective date.

Calculating Employee Wages

Administrative, Executive and Professional Employees

The final rule will allow, for the first time, non-discretionary bonuses and incentive payments (including commissions) to be used to satisfy up to 10 percent of an employee's standard salary level. This may include the payment of non-discretionary incentive bonuses tied to productivity and profitability. Non-discretionary bonuses and incentive payments may be used if they are paid on a quarterly basis, but more frequent payments are acceptable. However, the DOL will allow employers to make some "catch-up payments."

The DOL will also allow employers to use significantly large bonuses toward 10 percent of the required salary amount.

Highly Compensated Employees

Under the final rule, highly compensated employees qualify for an overtime exception if they meet the new salary level of \$134,004 per year. However these individuals must receive at least the full standard salary amount each pay period (i.e., \$913 per week, \$1,826 bi-weekly or \$3,956.33 per month) on a salary or fee basis (not counting non-discretionary bonuses and incentive payments).

The remainder of a highly compensated employee's wages may be calculated by including the full amount of non-discretionary bonuses and incentive payments (including commissions).

Impact on Employers

Given the significant increase in the salary level requirement, employers will need to increase employee salaries, or re-classify certain employees as either exempt or non-exempt, solely based on their salary level. The DOL estimates that this final rule extends overtime protections to approximately 4.2 million workers who are currently exempt under the white collar rules and clarifies overtime compensation eligibility for another 5.7 million white collar workers and 3.2 million salaried blue collar workers whose entitlement to overtime pay will no longer rely on the application of the duties test.

In addition, because of the short implementation deadline, employers should not delay becoming familiar with the new requirements and implementing any necessary changes into their timekeeping and payroll systems. Employers should also determine whether additional training on modifications is necessary for their managers and supervisors.

Finally, employers should also consider communicating with employees to inform them of how their wages, hours of work and timekeeping practices will be affected.

Enforcement and Compliance

Employers that fail to comply with the final rule may be subject to a variety of overtime wage payment enforcement mechanisms, including the ones listed below.

- Private employee lawsuits: These lawsuits can be initiated by employees either individually or through collective action to recover back pay, interest, attorneys' fees and court costs.
- Administrative injunctions: These injunctions may include a prohibition on the shipment of goods in interstate commerce if the goods were produced in violation of the FLSA (including overtime wage payment provisions).
- Civil fines for willful and repeated violations (up to \$1,100 per violation).
- Criminal charges for willful violations (up to \$10,000 in fines, imprisonment for up to six months or both).

More Information

Please contact your BB&T Insurance Services, McGriff, Seibels & Williams, or Precept representative for more information on the FLSA and other wage and hour laws.