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# It Still Hurts - DOL's Revised, Final Rule on Overtime Doubles Minimum Salary Level Starting December 1, 2016

By Paul A. Wilhelm / May 18, 2016

On May 18, 2016, the Department of Labor ("DOL") issued its long-awaited Final Rule for overtime exemptions, focusing on the "white collar" exemptions (executive, administrative, professional and certain computer employees). The Final Rule comes after the DOL processed 270,000 public comments on its proposed rule about which we wrote you, from late last summer. The Final Rule will take effect December 1, 2016 and will:

1. Raise the minimum annual salary level required for "white collar" exemptions to **\$47,476 (\$913 per week)**, up from the current \$23,660 (\$455 per week) - an increase of just over **100%**. (Recall, the salary level test does not apply to doctors, lawyers, or teachers, and certain computer employees can be exempt if paid at least \$27.63 per hour and meet applicable duties tests.) This final level is down slightly from the \$50,440 annual figure proposed last June.
2. For the first time, allow employers to use **nondiscretionary bonuses and incentive payments** (including commissions) to satisfy **up to 10%** of the standard salary level (*i.e.*, up to \$91/week or \$4,732 total annually), provided these payments are made on a **quarterly or more frequent basis**. The remaining 90% of the required, new salary level is \$822/week, or \$42,744 annually, totaling \$47,476.
3. Raise the minimum salary for those covered under the "highly compensated employee" exemption, from \$100,000 in total compensation annually, to **\$134,004** - an increase of **34%**. This final level is higher than the proposed rule, which had called for a new level of only \$122,148 - an increase of 22%.
4. Impose an **escalator provision** into the FLSA, automatically "updating" the above salary levels **every three years, beginning on January 1, 2020**, by tying the levels *ad infinitum* to certain economic measures. The proposed rule had called for annual "updates."
5. Impose **no changes to the duties tests**. The DOL had sought comments on possible changes to the standard duties tests for these exemptions, but decided not to make any such changes.

Misclassification of salaried-exempt employees is among the fastest-growing civil actions in both federal and state courts. With the Final Rule, the incentive for employees (and/or the DOL) to claim misclassification has increased. We advise clients to begin assessing whether they wish to pay the higher salaries and/or take other measures. We also advise them to review the duties of their employees that are or may be classified as salaried-exempt to ensure they meet the various duties tests for the white collar exemptions.

Look for an announcement regarding the launch of Clark Hill's FLSA Compliance Toolkit through HR Advantage coming soon. If you have additional questions, contact Paul A. Wilhelm at (313) 309-4269 | [pwilhelm@clarkhill.com](mailto:pwilhelm@clarkhill.com), or another member of Clark Hill's Labor and Employment Practice Group.