



May 18, 2016

The Department of Labor released the final overtime regulation this morning. Here are the key points of the rule:

- Salary basis is set at **\$47,476 annually/\$913 per week** (proposed was \$50,440). This salary level is based on the 40th percentile of full-time salaried workers in the lowest-wage census region, which is currently the south.
- The salary basis will **increase automatically every three (3) years** (proposed increase was annually). While this is less than the proposed annual increase, the salary basis will increase automatically every three years to maintain the 40th percentile of the lowest-wage census region.
- The duties test remains unchanged.
- The effective date is **December 1, 2016**. This gives employers less than six (6) months to assess how the final regulations will affect their workplace and implement strategic changes. Note that the next change will automatically occur December 1, 2020.
- The salary basis for highly compensated employees is now \$134,004 per year. This is based on the 90th percentile of all full-time salaried employees.

We share the Society of Human Resource Management's position on this matter: "The salary threshold — although slightly less than originally proposed — will mean many employees will lose the professional 'exempt' status that they have worked hard for and the flexibility from rigid schedules that they care deeply about. While changes in regulations were meant to benefit employees, a change of this magnitude will do the opposite. There likely will be fewer opportunities for overtime pay as employers are forced to restructure their compensation and staffing." See the full statement at https://www.shrm.org/about/pressroom/pressreleases/pages/statement_on_dol_final_overtime_rule.aspx

As of now, employers should begin to assess which employees will be affected by this change. Employers who are considering a substantive increase in an employee's salary to reach the new salary basis should keep in mind that there will be automatic increases on December 1, 2020.

Employers should begin to take stock of the duties performed by those salaried exempt employees who will be non-exempt and determine the number of weekly hours needed to complete the duties. For salaried exempt employees who follow a regular 40-hour work week schedule, the change should not have substantive financial implications for employers. However, for salaried exempt employees who generally work overtime, employers will need to consider how these changes will impact employee compensation and the performance of weekly duties.

Employers should begin to formulate a communication strategy for those employees who will be affected by this change. Many employees who are moved from salaried exempt to hourly will view this change in title and in flexibility as a demotion. Therefore, employers will need to be sensitive to morale and employee engagement through this process.

In the coming months employers will need to implement training programs to assist salaried exempt employees who are transitioning to non-exempt positions. Specifically, training programs should address time keeping and the performance of duties within a set schedule.

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Gibbel Kraybill & Hess LLP will be reviewing the final regulations in more detail and you should expect to hear more from GKH in the near future.

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