

2016 DOL UPDATES TO OVERTIME EXEMPTIONS

1. **Under the 2016 updates, the Salary cap has increased from \$455 per week to \$913 per week or \$47,476 annually based on 2015 Census salary data.**
 - a. Middle management, administrative and professional employees who earn less than \$913 per week will now need to be reclassified as non-exempt.
 - b. There is no change to the standard duties test that the Department created in 2004. Both the salary test and the standard duties test works in tandem. The duties are stated under each exemption category in the 2004 updates and none of them were affected by this year's updates.
 - c. Under the 2016 Final Rule, the DOL estimates that there are 6.5 million white collar workers that earn above \$913 per week, but whose duties fail the standard duties tests. So, for these employees, it would depend on the application of the duties test to determine if they are eligible for overtime.
 - d. The DOL estimates that there are 5.0 million white collar workers who earn less than \$913 per week, but who satisfy the standard duties test. These workers will now become eligible for overtime after Dec. 1, 2016.

New rule:

§541.600 Amount of salary required.

(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate per week of not less than the 40th percentile . . . such an employee must be compensated on a salary basis at a rate per week of not less than \$913 (or \$767 per week, if employed in American Samoa by employers other than the Federal government) . . .

(b) . . . The requirement will be met if the employee is compensated biweekly on a salary basis of \$1,826, semimonthly on a salary basis of \$1,978, or monthly on a salary basis of \$3,956. . . .

2. **Under the 2016 updates, employers are allowed to include bonuses, incentive payments, and commissions in calculating the salary.**
 - a. The new rules define what it means to be paid on a "salary basis," such that the employee's pay cannot be decreased based on quantity or quality of work.

- b. A section was also added informing that the employer can include bonuses, incentive pay, and commission to the calculation of the employee's salary. But limits it to only 10% of the total salary.

New Rule:

§541.602, revises paragraph (a) to read as follows:

(a) *General rule.* An employee will be considered to be paid on a "salary basis", within the meaning of this part, if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.

(1) Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work.

(2) An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(3) Up to ten percent of the salary amount required by §541.600(a) may be satisfied by the payment of nondiscretionary bonuses, incentives, and commissions that are paid quarterly or more frequently. . . .

3. Under the 2016 updates, the Secretary of the DOL will determine the 40th and 90th percentile salaries and automatically update the standard salary and highly compensated salary levels every three years.

- a. Beginning in 2020, the salary levels will be updated every 3 years.
 - i. The effective date will be on January 1st.
 - ii. The DOL will publish the new salary levels on its website 150 days prior to the effective date.

New Rule:

§541.607 Automatic updates to amounts of salary and compensation required.

(a) *Standard salary level.* The amount required to be paid to an exempt employee on a salary or fee basis . . . is: (1) \$913 per week as of December 1, 2016; and (2) Beginning on January 1, 2020, and every three years thereafter, updated to equal the 40th percentile of weekly earnings of full-time non-hourly

workers in the lowest-wage Census Region in the second quarter of the year preceding the update as published by the Bureau of Labor Statistics.

(d) The amount required in total annual compensation for an exempt highly compensated employee pursuant to §541.601, is: (1) \$134,004 per year as of December 1, 2016; and (2) Beginning on January 1, 2020, and every three years thereafter, updated to correspond to the annualized earnings amount of the 90th percentile of full-time non-hourly workers nationally in the second quarter of the year preceding the update as published by the Bureau of Labor Statistics.

4. Specific updates to the classifications.

- a. Adds language that the worker must be compensated above the standard salary level to qualify for the exemption.
- b. Increases the hourly rate that a computer employee must be compensated to qualify for the exemption.

Executive & Administrative: (1) Compensated on a salary or fee basis pursuant to §541.600 (noted above) at a rate per week of not less than the 40th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region . . .

Computer Employee: Exemption applies to any computer employee compensated on an hourly basis at a rate of not less than \$27.63 an hour.

5. Under the 2016 updates, the salary level for highly compensated employees increases from \$100,000 to \$134,004.

- a. Blue collar workers regardless of earning \$134,004 or more are not subjected to this exemption.
- b. Must be in the role of an executive, administrative or professional.

§541.601 - Highly compensated employees.

(a) An employee shall be exempt under section 13(a)(1) of the Act if:

- (1) The employee receives total annual compensation of at least the annualized earnings amount of the 90th percentile of full-time non-hourly workers nationally; and

(2) The employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subpart B, C, or D of this part.

(b) As of December 1, 2016, and until a new amount is published in the Federal Register by the Secretary and becomes effective, such an employee must receive total annual compensation of at least \$134,004.

Possibilities as a result of new rules:

- Employers might limit work hours to avoid overtime.
- Employers might increase salaries that fall below \$913 per week, and change workers duties to satisfy the duties test.
- This new rule may incentivize employers to shift to a more part-time workforce; resulting in more workers having to get a second job.
- Employers might eliminate lower-paid entry-level professional positions (i.e. assistant managers).
- Employers will need to restructure their organizations to maintain detailed records of non-exempt workers' work time, otherwise they will be the target of litigation.

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