



# THE NEW OVERTIME REGULATIONS

HOPE EASTMAN  
JIM HAMMERSCHMIDT  
JESSICA SUMMERS

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# PRESENTATION OVERVIEW

- History of the New Regulations
- Overview of the FLSA and the Impacted Rules
- What is (and is not) in the New Rules
- How to Respond to the New Rules

# HISTORY OF THE NEW REGULATIONS

- **March 13, 2014** – President Obama issues presidential memorandum to Secretary of Labor directing update of overtime rules
- **June 30, 2015** – DOL publishes proposed rules for notice and comment
- **May 18, 2016** – DOL issues final rules
- **December 1, 2016** - New rules goes into effect

# FAIR LABOR STANDARDS ACT (FLSA) OVERVIEW

- Under the FLSA, employees must be paid overtime at a rate of one and a half times their regular rate of pay for any hours worked over forty hours in a given workweek.
- There are a number of exemptions to the FLSA overtime requirements (set forth in 29 U.S.C.A. § 213).
- Perhaps the most commonly used group of exemptions are those for “white collar” employees - specifically employees whose primary duties are executive, administrative, professional, computing or outside sales.

# THE WHITE COLLAR EXEMPTIONS

To qualify as an FLSA-exempt executive, administrative, professional or computing employee:

- The employee's **primary duties** must be executive, administrative, professional or computing (as defined by regulation) AND
- The employee must be paid a minimum salary\*

\*Except for computer employees who can either be paid a minimum salary or a minimum hourly rate

# THE HIGHLY COMPENSATED WORKER EXEMPTION

To qualify as an FLSA-exempt highly compensated employee:

- The employee must **regularly or customarily** perform one or more of the duties of an executive, administrative or professional employee (as defined by regulation) AND
- The employee must be paid a minimum salary

# OVERVIEW OF THE CHANGES IN THE FINAL RULE

- Increases the salary thresholds for the white collar and highly compensated exemptions
- Implements a system for the automatic updating of the salary thresholds in the future
- Allows non-discretionary bonuses and incentive compensation to count towards a certain portion of the white collar salary threshold
- No changes to the duties tests for either the white collar or highly compensated exemptions

# NEW WHITE COLLAR SALARY THRESHOLD

- **Prior Salary Threshold:** \$455 per week (or \$23,660 annually)
- **New Salary Threshold:** \$913 per week (or \$47,476 annually)
- This new salary threshold is based on the 40th percentile of weekly earnings for full-time salaried workers in the lowest paid Census Region (currently the South) as calculated by Bureau of Labor Statistics (BLS)



# NEW HIGHLY COMPENSATED SALARY THRESHOLD

- **Prior Salary Threshold:** \$100,000 annually
- **New Salary Threshold:** \$134,000 annually
- This new salary threshold is based on the 90th percentile of weekly earnings for full-time salaried workers nationally as calculated by Bureau of Labor Statistics (BLS)

# AUTOMATIC INCREASES TO SALARY THRESHOLDS

- The rules have never before included a system for automatically increasing the thresholds
- The thresholds for white collar and highly compensated exemptions will now be adjusted **every three years** based on the BLS data
- First update – January 1, 2020

# INCLUSION OF BONUSES AND INCENTIVE COMP

- Non-discretionary bonuses and incentive compensation (including commission) can now count towards up to 10% of the white collar salary threshold as long as they are paid at least quarterly.
  - In other words - an employer can pay an employee a base salary of at least 90% of the salary threshold (\$821.70 per week) and then make up the remaining 10% (\$91.30 per week) with the payment of non-discretionary bonuses and incentive compensation.
- No change to rules for the highly compensated exemption.

# CATCH-UP PAYMENTS

- Added to address the fact that employers may not know in advance whether an employee will earn enough in discretionary bonuses and incentive compensation to hit the salary threshold.
- The new rule allows employers to make catch-up payments to bring employees up to the salary threshold as long as the catch-up payments are made no later than the pay period after the end of the quarter.

## CATCH-UP PAYMENT – EXAMPLE

An employee is paid 90% of the salary threshold (\$821.70) and then expected to make the remaining 10% through non-discretionary bonuses and incentive compensation. At the end of the 13 week quarter the employee's base salary plus her non-discretionary bonuses and incentive compensation are only \$10,000, which is less than the \$11,869 ( $\$913 \times 13$  weeks) that she would have needed to hit the salary threshold. To correct this, on the next payday after the end of the quarter, the employer can pay the employee \$1,869 (the difference between her actual earnings and \$11,869) without the employee losing her exempt status.

# DUTIES TEST

- In its proposed rules, the DOL did not suggest any specific changes to the duties tests but simply asked for comments on whether any changes should be made to the duties tests.
- The new rules make no changes to the duties tests for the white collar or highly compensated exemptions.

# RESPONDING TO THE NEW RULES

- The new rules go into effect on December 1, 2016
- Employers should take the time to learn and educate their decision makers about the rules to ensure that they will be in compliance
- Employers should audit all exempt employees' salaries and duties to ensure proper classification
- Employers will need to decide how to handle exempt employees whose salaries will no longer meet the threshold

# CONSIDERATIONS AS TO EMPLOYEES WHOSE SALARIES WON'T MEET THE NEW THRESHOLDS

- How much will the employee's salary need to be increased to meet the new threshold?
- How much overtime does the employee currently work?
- Will there be a loss of productivity if the employee is instructed not to work overtime?
- What will the impact be on recruitment and retention?



# HANDLING RECLASSIFICATIONS

- Communicate changes effectively
- Ensure FLSA compliance by newly non-exempt employees (and their supervisors)
- Identify any impact on benefits and consider whether to make adjustments accordingly
- Update job descriptions and recruiting materials

# CONCLUSION AND QUESTIONS

We hope this has been a helpful overview of the new overtime regulations

If there are any questions we would be happy to address them now

**Thank you!**