

# New Overtime Rules Go Into Effect January 1, 2020

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Practice Area: Labor and Employment

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Starting January 1, 2020 the salary threshold for an "exempt" employee under the Fair Labor Standards Act (FLSA) will increase to \$648 per week, or \$35,568 annually. The Department of Labor recently finalized its new rules to determine whether an employee qualifies as exempt from overtime under the FLSA. The new rules will replace the 2016 proposed rules, which never went into effect.

## **The 2016 Rules**

In 2016, the Department of Labor proposed updating the salary threshold for exempt employees under the executive, administrative, or professional exemption from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually). This meant that, in addition to meeting the duties test for one of the three exemptions, an employee would need to be paid at least \$47,476 per year in order to be considered exempt from the overtime requirements of the FLSA. Additionally, the 2016 rules raised the threshold for the "Highly Compensated Employee" exemption from \$100,000 to \$134,004.

The 2016 rules, however, were blocked by a federal District Court for the Eastern District of Texas and never went into effect.

## **The New 2020 Rules**

The new rules for 2020 will raise the salary threshold for the executive, administrative, and professional exemptions, but will not go as far as the ill-fated 2016 rules. Starting on January 1, 2020 the salary threshold for the executive, administrative, and professional exemptions will rise from \$455 per week (\$23,660 annually) to \$684 per week (\$35,568 annually). This threshold will also apply to employees who fall under the computer employee exemption. Additionally, the "Highly Compensated Employee" exemption threshold will rise from \$100,000 to \$107,432 annually.

To assist with meeting the new threshold, the Department of Labor will allow employers to use nondiscretionary bonuses and incentive payments, including commissions, to satisfy up to 10% of the salary threshold for the executive, administrative, and professional exemptions. Discretionary bonuses cannot be used toward meeting the salary threshold. The Department of Labor will allow employers to make catch-up payments to employees who do not earn enough in nondiscretionary bonuses or incentive payments in a given 52-week period to retain exempt status, provided that the catch-up payment is made within one pay period of the end of the year.

## **What Hasn't Changed**

The duties tests, which require that employees meet certain duties requirements in order to be exempt from overtime, have not changed. The duties tests will remain the primary method for determining whether an employee is exempt, subject to the higher salary thresholds.

There will also be no automatic updates to the salary threshold, as set in the 2016 rules. The Department of Labor has committed to updating the salary thresholds more often, through traditional rulemaking, but has declined to implement a system where the salary thresholds will update automatically based upon a formula.

**What Does This Mean For Employers?**

The new rules end a multi-year period of uncertainty for employers. Since the 2016 rules were blocked, employers have been waiting patiently to see how the Department of Labor would respond. The new rules give employers clear guidance on how to determine whether an employee is exempt, at least until the next round of rulemaking from the Department of Labor.

Employers will need to examine their exempt employees and verify that the employees will remain exempt under the new 2020 rules. Many employers who took steps in response to the 2016 rules may already be in compliance with the 2020 rules as they set a lower threshold for exemption.

Overall, the appropriate response to the new rules may vary from employer to employer. There is value in discussing with counsel the new rules and how they impact your workforce.

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