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STRAUSS HAUER & FELD LLP

Labor and Employment Alert

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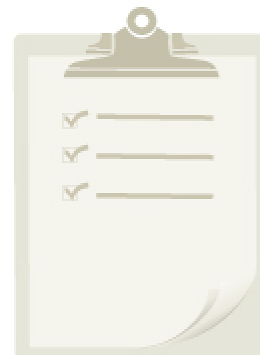
If you read one thing…

- New DOL regulations require that employers pay executive, administrative, professional and computer employees a minimum salary of $913/week ($47,476/year) to qualify as exempt from federal overtime rules.
- The DOL's new salary thresholds will increase every three years based upon compensation data published by the Bureau of Labor Statistics.
- Employers may now use bonuses, commissions and other incentive payments to meet up to 10 percent of the salary requirement for exempt employees.



Final Rule Requires the Provision of Overtime Pay to Millions of Additional Employees

The Department of Labor (DOL) has released its final rule amending the executive, administrative, professional, and computer employee exemptions under the Fair Labor Standards Act (FLSA). The new rule, which goes into effect on December 1, 2016, makes significant changes to the salary requirements that many "white collar" workers must meet to qualify as exempt from federal overtime rules.

Under the new rule, the minimum salary necessary to qualify as an exempt executive, administrative, professional or computer employee is $913 per week (equivalent to an annual salary of $47,476). The new salary threshold is more than double the prior threshold of $455 per week (equivalent to an annual salary of $23,660), but less than the amount originally proposed by the DOL. The minimum compensation necessary to qualify for the "highly compensated employee" exemption also has been raised, from $100,000 per year to $134,004 per year. New salary thresholds also have been set for workers in American Samoa and the motion picture industry.

The new rules also require that the salary threshold be updated every three years, beginning on January 1, 2020. New salary thresholds will be set at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (currently the South), as measured at the end of the second quarter of the previous year. New salary thresholds for highly compensated employees will be set at the 90th percentile of earnings of full-time salaried workers nationally. These revised salary requirements will be announced 150 days prior to the date they are scheduled to go into effect.

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Although the new salary levels represent a drastic departure from prior requirements, the DOL's rules give some relief to employers by allowing them to count nondiscretionary bonuses, incentives and commissions toward up to 10 percent of the required salary level. To qualify, the bonuses, commissions or incentives must be paid on a quarterly or more frequent basis. Employees who fail to earn sufficient bonus or commission income during the quarter to meet the new salary threshold must receive a "true-up" payment in the first pay period after the quarter ends to bring their total compensation to the required amount.

The DOL's new rules do not make any changes to the "duties test" for exempt employees. In addition to meeting the new salary requirements, an employee's primary duty must still be executive, administrative or professional duties as defined by the regulations in order to qualify for an exemption. Employers also must ensure that an employee's salary is fixed and not subject to reduction because of variations in the quantity or quality of their work if they wish to maintain the exemption.

Contact Information

Should you or your business have any questions about the rule or its potential application to your workforce, please contact:

Joel M. Cohn
jcohn@akingump.com
+1 202.887.4065
Washington, D.C.

Nathan J. Oleson
noleson@akingump.com
+1 202.887.4425
Washington, D.C.

Stacey Recht Eisenstein
seisenstein@akingump.com
+1 202.887.4427
Washington, D.C.

Gregory W. Knopp
gknopp@akingump.com
+1 310.552.6436
Los Angeles

Robert G. Lian Jr.
blian@akingump.com
+1 202.887.4358
Washington, D.C.

Gary M. McLaughlin
gmclaughlin@akingump.com
+1 310.728.3358
Los Angeles

Daniel L. Nash
dnash@akingump.com
+1 202.887.4067
Washington, D.C.

Donna M. Mezias
dmezias@akingump.com
+1 415.765.9575
San Francisco