



DOL Overtime Rule Now Expected Late 2016

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The United States Department of Labor (DOL) has announced that the much-anticipated new rules under the Fair Labor Standards Act (FLSA) which will increase salary thresholds for exempt employees will not be released until late 2016. The DOL reports that it received over 250,000 comments regarding the proposed rules, and additional time is needed to review these comments. Employment lawyers predict this late release will result in a shorter compliance period, suggesting that employers may only have between 30-60 days after the final rule is published to implement changes. Another possibility being discussed is phased-in effective dates. The decision on the effective date(s) for the new regulations no doubt will depend on the 2016 election, given the controversy surrounding these new rules.

On June 30, 2015, the Wage and Hour Division of the DOL issued a notice of proposed rulemaking for rules that could dramatically reduce the number of exempt employees under the white-collar exemptions of the Fair Labor Standards Act. The white-collar exemptions apply to professional, executive and administrative employees, as well as certain computer analysts, programmers and engineers.

The proposed rule has the following major changes:

- The annual salary threshold for exempt executive, administrative, professional and computer employees will increase to \$970 a week (\$50,440 a year) more than twice the current amount
- The annual salary threshold for administrative employees of educational establishments will increase to \$970 a week (\$50,440 a year) or a salary basis that is at least equal to teachers' entrance salaries
- The annual salary threshold for highly compensated employees will increase to \$122,148 a year
- After 2016, salary thresholds will increase annually based on a methodology or index to be announced.

Although there are several issues related to the proposed rules that are impossible to predict at this time, it is fairly certain that the salary thresholds will substantially increase and that many positions that currently are classified as exempt will no longer meet the salary requirements of these exemptions.

To prepare for the new rules, employers should:

- Identify current exempt positions with salaries near or below the new threshold, e.g. \$970 per week or \$50,440 per year
- Evaluate whether salaries for these positions should be increased, or whether these positions should be re-classified as non-exempt

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- Include in evaluation not only an assessment of payroll costs and overtime pay, but an analysis of the impact on incentive performance plans, bonuses, retirement plans, and other forms of compensation
- For employees who are exempt due their status as highly compensated employees, review job duties to determine whether these positions can satisfy the standard tests for exemption, rather than the shorter test applicable to highly compensated employees
- Develop a communication plan to inform employees of any changes
- Consider training for re-classified employees, their managers and supervisors on FLSA record-keeping obligations for non-exempt employees and restrictions that may apply on contacting employees outside of regular work hours.



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