

HR Matters

SPECIAL EDITION

DOL Issues Long-Awaited New Overtime Rule. Now What?

The White House unveiled late Tuesday, and the Department of Labor announced on Wednesday, that the final version of the long-awaited new overtime rule is scheduled to be released on May 23, 2016. According to the White House, the rule will require new overtime payments to 4.2 million more Americans by the end of this year.

As anticipated, the final rule increases the minimum salary and compensation levels required for employees to be exempt from overtime pay. The final rule, however, does not change the “duties test” – *i.e.*, the additional threshold to exempt status that requires an employee’s responsibilities primarily involve exempt duties as defined by the regulations. Key provisions of the new rule include:

- An increase in the minimum salary level for most overtime-exempt employees from \$455 per week to \$913 per week (or \$47,476 annually) – *note that the new salary level does not affect certain exempt professionals (i.e. teachers, lawyers, and doctors) who are not subject to the salary basis and salary level requirements;*
- The option to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the new minimum salary level;
- An increase of the highly compensated employee threshold to \$134,004 annually from \$100,000 annually. This is the level above which only a minimal showing is needed to demonstrate an employee is not eligible for overtime; and
- An automatic increase to the minimum salary and compensation levels every three years that is tied to the salary level and weekly earnings of full-time salaried workers in the lowest-wage Census Region (the first automatic increase is slated for January 1, 2020).

December 1, 2016 is the deadline for all employers to comply with this new rule. The new rule

makes no exceptions for not-for-profit organizations or small businesses. Employers should consider these things to help navigate the changes:

- **Identify Affected Job Classifications.** Employees affected by the new rule include those who are paid a salary less than \$913 per week or \$47,476 annually and working more than 40 hours per week. The DOL estimates that nearly 40% of the salaried workforce will be impacted. Under the new rule, nondiscretionary bonuses and incentive payments (including commissions) can now account for up to 10% of the new minimum salary level if paid quarterly.
- **Calculate Each Affected Employee's Hours Worked.** Since exempt employees are not required to track their hours, employers may not be fully aware of the hours an exempt employee is working. Consider all "compensable time," including time spent on social media or working from home, waiting time, meal and rest periods, travel time, and training time. Use this information to calculate the potential overtime pay increase (based on current salary rates). Now also may be the time to consider whether "salaried, non-exempt" status is the right fit for certain positions.
- **Review Each Position's Job Duties.** Employee FLSA classifications are tricky. Although the job duties tests remain intact, review the duties of all exempt employees and confirm that each qualifies as exempt from overtime pay. Consider whether job duties can be consolidated or reassigned with other positions to minimize the number of affected employees.
- **Review Your Overtime Policy.** Employers can prohibit or restrict an employee's use of overtime, but must generally pay any overtime worked even if it violates the employer's overtime policy. A polished overtime policy will detail when (or if) overtime is permitted, the methods for requesting and receiving permission to work overtime, and the consequences for policy violations.
- **Formulate a Plan.** Reclassifying positions, raising salaries to meet the new minimum threshold, rotating job duties, or requiring employees to now track their time will likely affect employee morale. Have a clear, unified message for how and why these changes are occurring, and plan to monitor and follow-up with employees to assure compliance.

These next six months will go quickly! Graydon Head's Labor and Employment team is prepared to help our clients navigate this major change by offering privileged advice regarding your options.

Graydon Head's Julie Pugh will be presenting a webinar this afternoon on the new regulations. Click the link below to register for:

[Analyzing the Final DOL Overtime Rule](#)

May 19, 2016 | 4:00 p.m.

For more information on this topic, please contact your [Graydon Head attorney](#).