

Legal Alert

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NEW OVERTIME RULES GO INTO EFFECT ON DECEMBER 1ST—WHAT SHOULD I DO NOW?

As you should already know, employees generally fit into one of two categories. They are either entitled to overtime or they are not. If not, we usually say they are exempt.

A key component of whether an employee is exempt or non-exempt is the duties they perform. Employees who qualify as executive, administrative, professional, and some computer professionals, based on the primary duties they perform, customarily and regularly, are considered exempt. However, there is also a second step. Even if the employee meets all of the duties test requirements, they have to be paid on a salary basis of at least \$23,660 a year, or \$455 per week.

Starting December 1, 2016, the minimum required salary to be exempt from overtime more than doubles to \$47,476 per year (\$913 per week). This change is going to make about 4.3 million employees who used to be exempt now entitled to receive overtime pay, even without any change in their duties. In addition, this minimum salary requirement will be adjusted every three years going forward, tied to various economic indicators, including inflation. Some are predicting the adjusted salary on January 1, 2020 is likely to be \$51,000 annually.

What should every employer be doing now in anticipation of this change?

First, you should examine whether the employees you have been treating as exempt really are exempt. Do those employees actually perform the duties that meet the exemption qualifications? If not, now is a good time to change their status to non-exempt.

Consider what you are going to do with your employees who meet the duties test and are close to the new salary minimum. Are you going to give them a raise so that they will continue to be exempt? If they seldom work more than 40 hours a week, will it be less expensive to just start paying them overtime rather than giving them a raise?

For employees who work a lot of hours and were exempt but are nowhere near earning \$913 per week in base salary, are you going to adjust their compensation so you are paying them on an hourly basis at a lower hourly rate so that with overtime added they are still making about the same amount each week?

Do you need to reduce fringe benefits to cover the cost of overtime? If you do that, will you still be able to compete for the best employees?

Also consider putting in stricter controls to limit the number of overtime hours worked.

To assist in meeting the minimum salary threshold, after December 1, employers will be able to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the minimum salary level (i.e., up to \$91 a week or \$4,732 annually). However, the payments must be made at least quarterly to qualify.

The new minimum salary for those covered by the highly compensated employee exemption has been increased to \$134,004 per year.

This does not have to be confusing. If you would like assistance in planning for this change, please call Rick Mahrle at (602) 256-4433.

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