



## Department of Labor Releases New Overtime Rule: More Than 4 Million Employees Newly Eligible for Overtime Pay

The Fair Labor Standards Act requires employers to pay overtime rates to many employees working more than 40 hours in a work week. The FLSA exempts certain positions from overtime rates for employees in executive, administrative and professional positions that meet certain requirements set forth in the Department of Labor's regulations including being paid a minimum salary level. On May 18, 2016, the Department of Labor issued its long anticipated Final Rule raising the minimum salary level to qualify as exempt to **\$47,476** annually. It is anticipated that 4.2 million workers formerly classified as exempt will now be entitled to overtime pay. The Department of Labor estimates the cost to employers resulting from the Final Rule will exceed \$1.5 billion.

This Final Rule:

- Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South, which is \$913 per week or \$47,476 annually for a full-year worker;
- Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally, which is \$134,004; and
- Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.

Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level. The Final Rule makes no changes to the duties tests.

The Final Rule becomes effective December 1, 2016. It is essential that employers review their classification of exempt employees and adjust their overtime pay practices to comply with the Final Rule prior to that date. **Employers who fail to do so will have substantial exposure for overtime pay, liquidated damages and attorney fees.** Conversely, job classifications, and compensation schemes, properly crafted to comply with FLSA regulations, as modified by the Final Rule, can substantially limit your exposure to increased overtime pay.

**Now is the time to fully review your FLSA compliance policies, and compensation practices. Carr Allison has the experience and qualifications to assist you in this effort. Please contact Bob Stewart or Bricker Daughtry for assistance.**

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