

Employment Counseling & Litigation

December 19, 2019

A New Year and a New Rule: Overtime and Other Wage and Hour Changes to Take Effect in 2020

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What You Need To Know:

- The minimum salary threshold for “white collar” exemptions under the federal Fair Labor Standards Act (FLSA) is set to increase to \$684 per week (\$35,568 annualized).
- The FLSA’s “highly compensated” employee exemption’s total annual compensation requirement rises from \$100,000 to \$107,432 per year.
- The FLSA’s duties tests remain unchanged.
- Employers continue to need to ensure compliance with the FLSA, as well as with applicable state and local laws, with respect to employee classifications.

On January 1, 2020, the U.S. Department of Labor’s (DOL) long-awaited Final Rule to the “white collar” minimum wage and overtime pay exemptions takes effect. The Final Rule will increase the minimum annual salary threshold from \$455 per week (\$23,660 annualized) to \$684 per week (\$35,568 annualized) to qualify white collar positions as exempt from the FLSA’s minimum wage and overtime requirements. To be exempt from overtime, employees, in addition to meeting the salary threshold, must meet certain minimum requirements related to their job duties.

The DOL will allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the minimum salary level for the white collar exemptions, provided that such payments are paid at least annually. Employers are also permitted under the Final Rule to meet the salary-level requirement by making a catch-up payment within one pay period of the end of the 52-week period. In other words, during each pay period, an employer must pay the employee on a salary basis (or, as permitted in some instances, a fee basis) at least 90 percent of the minimum salary level; if at the end of the

52-week period the sum of the salary/fee paid plus the nondiscretionary bonuses and incentive payments (including commissions) paid does not equal the minimum salary level for the 52-week period, the employer must make up for the shortfall (up to 10 percent of the required salary level) during one pay period.

Separately, the Final Rule increases from \$100,000 to \$107,432 the total annual compensation required for employees to qualify under the FLSA’s shorter “highly compensated” employee test. While nondiscretionary bonuses and incentive payments (including commissions) may be counted toward the highly compensated employee total annual compensation requirement of \$107,432, highly compensated employees must receive at least \$684 per week on a salary or fee basis.

To be exempt, employees must meet not only the federal exemption requirements but also any state-specific requirements. For example, for an employee in New York state to be considered exempt under certain white collar exemptions, the employee must meet minimum requirements related to job duties and also be paid a much higher threshold amount than that contained

in the Final Rule. Specifically, beginning on December 31, 2019, New York City employers with 10 or fewer employees will be required to pay their employees \$1,125 per week (\$58,500 annualized) to maintain these exemptions. The minimum salary threshold for these exemptions applicable for New York City employers with 11 or more employees currently is \$1,125 per week (\$58,500 annualized) and is set to remain at that level in 2020. Notably, under New York law, the risks associated with wage and hour violations will also soon increase for some, as New York has recently expanded its Limited Liability Company Law, effective February 10, 2020, to expressly hold the top 10 members of a foreign (not just domestic) limited liability company personally liable for wages owed as a result of services performed in New York state.

Employers should also be aware of various state and local minimum wage increases set to take effect in the new year.

If you have not already done so, you should take immediate steps to review your compensation and classification practices to ensure compliance with changing federal and state laws. Lowenstein Sandler LLP's employment law attorneys are experienced and knowledgeable about wage and hour compliance, and would be pleased to provide legal counsel if you have questions.

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