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The Department of Labor's White Collar Overtime Rules Are Here: *An Increase in the Minimum Salary, but No Changes to the Duties Test*

The Department of Labor (DOL) released its much anticipated Final Rule revising its amended white collar overtime regulations this afternoon at an event in Columbus, Ohio.

The final rule includes a few changes from the [Proposed Rule](#), and to the extent that companies were changing practices to comply with the Proposed Rule in anticipation of the Final Rule, there are a few matters of note.

First, the Final Rule increases the minimum salary threshold required to qualify for the Fair Labor Standards Act's (FLSA) white collar exemption to \$47,476 per year (\$913 per week). Although nearly double the current minimum salary threshold of \$23,660 per year (\$455 per week), it is slightly lower than the \$50,440 minimum salary set forth in the Proposed Rule. In other words, there is a little more room for employers, also aided by the fact that the Final Rule permits employers to include bonuses and other incentive payments up to 10 percent when determining compliance with the new minimum salary requirement. Moreover, no one will be waiting another 20-plus years for updates to the minimum salary threshold. It will now be updated every three years and tied to the salary of the 40th percentile of full-time salaried workers in the lowest wage region of the country, currently the Southeast.

Second, many feared little time to implement workforce changes in response to the Final Rule. The DOL responded to such concerns, setting an implementation date of Dec. 1, 2016. This is far longer than the traditional 60-day implementation period that many had feared.

Finally, the Final Rule does not include any changes to the duties tests of any of the white collar exemptions. The DOL considered turning back the clock and adding a quantification component similar to California's duties test that would have required employers to show an employee was performing exempt duties for a certain percentage of time to qualify under the specific exemption, but ultimately declined to make any such changes.

Impact on Employers

Employers have known for months that changes regarding the white collar exemption were all but certain but employers now know the exact parameters of the changes.

Although employers can breathe a sigh of relief that the DOL decided not to change any of the duties tests to meet the white collar exemptions, the increase in the minimum threshold salary required to qualify for the FLSA's white collar exemptions will likely have a substantial effect on employers, particularly in retail and service industries. Indeed, employees whose salaries are between the old minimum salary to qualify for a "white collar" exemption under the FLSA (\$23,660) and the new minimum salary (\$47,476) yet meet the relevant duties test will no longer qualify for a white collar exemption.

With the final rule becoming effective Dec. 1, 2016, employers should act quickly and consult with counsel in order to ensure compliance.

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