

INCREASES IN SALARY THRESHOLDS UNDER THE FLSA PORTEND OVERTIME FOR MILLIONS OF TRADITIONALLY EXEMPT EMPLOYEES

On May 17, 2016, the U.S. Department of Labor ("DOL") **announced the details** of its final rule under the Fair Labor Standards Act, establishing new salary thresholds for millions of traditionally exempt white collar employees. These changes will significantly impact many employers' budgets in coming months, although not by as much or as soon as the DOL and others previously suggested. The main points in the rule are as follows.

- In order to be considered "exempt" from overtime, employers will have to pay professional, salaried and administrative employees \$913 per week or \$47,476 annually (a very significant jump from the current minimum of \$23,660 annually). Employers will be allowed to meet 10 percent of these salary minimums with non-discretionary bonus payments, incentives and commissions as long as those payments are made at least quarterly.
- The new minimum for the special class of "highly compensated employees" will be \$134,004 annually.
- The new rule will not change the duties an employee must perform in order to be considered exempt nor will the new rule change the salary thresholds for outside sales employees or computer professionals.
- Adjustments to the new salary minimums will be made every three years beginning on January 1, 2020, which is less often than the yearly adjustments previously forecast.

Employers also should consider the effect of any state or local laws that carry more generous or existing obligations.

PRACTICAL TAKEAWAYS

In the face of concerns from non-profit employers, including those in health care, the DOL suggests two main alternatives to limiting the budgetary impact: (a) pay "salaries" below the new threshold and also overtime for hours above 40 in a work week; and (b) adjust scheduling and workloads (so that hours stay at or below 40 in a work week). Many non-profit organizations will find little solace in these suggestions.

Employers have some time to review their exempt employees' salaries and budget for these changes. The rule will be effective on December 1, 2016, which is later than many previously expected. Legislative and legal challenges are possible, but the likelihood of their success at this time is uncertain.

If you have questions regarding these changes, please contact Jon Rabin at (248) 457-7835 or jrabin@hallrender.com or your regular Hall Render attorney.

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