

Overtime Exemptions Shrink

3 min read

May 18, 2016

The hour has arrived. [Last summer](#), the Wage and Hour Division of the Department of Labor announced substantial revisions to federal regulations delineating who is exempt from overtime pay. After almost a year of waiting ([and over 290,000 comments to the draft rule](#)), the DOL announced this week that it will be publishing the final form of its revised overtime regulations under the Fair Labor Standards Act (FLSA). This final publication will occur on Monday, May 23, 2016, but the pre-publication version is [publicly available now](#).

Bottom Line Up Front

The new rules mean that, beginning on December 1, 2016, employees making less than \$913 a week (\$47,476 annually) must be paid one and one-half times their regular rate of pay for all hours they work over forty (40) hours in a workweek, regardless of the employees' duties. *This includes salaried employees making less than \$913 a week!*

An Overtime Refresher

The law requires the payment of overtime wages (consisting of one and one-half times the employee's regular rate of pay) for the hours an employee works over 40 hours in a workweek. The FLSA provides a number of exemptions to this general requirement.

A commonly used exemption is the "white collar exemption" for executive, administrative, professional, outside sales, and computer employees. An employee is exempt from overtime pay if an employee is paid at least a certain amount on a salary basis (the "threshold") and meets standards used to determine whether the employee's tasks really mean he or she is a "white collar" employee (the "duties" test). If the employee does not earn enough money to meet the threshold, his or her duties are irrelevant and the employee must be paid overtime. Although the proposed rules considered it, the final rules do *not* modify the "duties" tests in place since 2004.

By nearly doubling the salary threshold for exemption from \$455 to \$913 a week, these revised rules mean that many formerly-exempt "white collar" workers will suddenly be eligible for overtime pay when they work over 40 hours a week.

Under both the outgoing and revised rules, the salary threshold test does not apply to employees who are teachers, doctors, lawyers, or outside sales employees—these “white collar” employees are exempt because of their primary duties regardless of pay.

The rules also increase the “total annual compensation” threshold for “highly-compensated employees” from \$100,000 to \$134,004. This rule applies to those employees whose duties do not qualify for an exemption under the “duties” test, but who both pass a “minimal duties” test and earn total compensation above the threshold.

Finally, for the first time ever, the DOL is also indexing the salary and compensation thresholds in order to keep up with inflation.

In the end, the DOL estimates this expansion will cover 4.6 million workers. Meanwhile, others estimate this expansion will cost employers \$1.2 billion.

Anchors Aweigh.

The released final rule is a brute, coming in at over a full ream of paper. Although the only readily-apparent change from the draft rules to the final rules is a reduction of the threshold from a proposed \$970 per week to \$913, we are thoroughly reviewing the 508-page long publication to ensure that there are no surprises lurking within (such as slight changes to the duties tests). A more thorough review and discussion is likely to be forthcoming once we are able to fully digest the final version of the rule to be formally published in the [Federal Register](#).

Moving Forward

Between now and December 1, 2016, it is imperative for employers to evaluate whether their currently-exempt employees must soon be paid overtime. This evaluation may require evaluating a combination of employee pay, hours, position descriptions, and the actual duties performed. Employers should also begin considering the ramifications this change has to their operations and finances by considering issues as diverse as employee reclassification, assignments, staffing levels, full or part-time status for employees, and strict monitoring and/or restriction of employee overtime, among many other issues.

Finally, employers should be cognizant of the potential for an uptick in wage and hour claims while they are in the midst of the shifting sands of regulatory change. The FLSA provides for automatic “reasonable attorney’s fees” for prevailing plaintiffs’ attorneys, which makes contingency fee arrangements all the more attractive. The FLSA also prohibits retaliating against employees who file or participate in complaints. Therefore, employers should ensure they are prepared to professionally handle these situations.

Contact your regular Hinshaw attorney or Evan Bonnett in our Rockford Office (815-490-4931) for information regarding compliance with these new regulations or if you have any other questions.

Topics

Wage And Hour, Wages, Overtime, Exemption, Unpaid Wages, Administrative Exemption, Fair Labor Standards Act, U.S. Department Of Labor