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Department of Labor Announces a New Salary Threshold for the Overtime Exemption, Again

Client Alert

4.24.2024

On April 24, 2024, the Department of Labor ("DOL") issued its final rule that would increase the salary threshold for the overtime exemption. This increase will be done in two steps: beginning on July 1, 2024, the salary threshold would increase from \$35,568 to \$43,388 and then on January 1, 2025, the salary threshold would increase from \$43,388 to \$58,656. Additionally, the salary threshold for highly compensated employees will increase in two steps: on July 1, 2024, it will be increase from \$107,432 to \$132,964 and then to \$151,164 on January 1, 2025.

The final rule means that current exempt employees making less than \$43,388 would no longer qualify as exempt from overtime on July 1, 2024. And if that employee is not making at least \$58,656 by the first of the next year, they would no longer be qualified as exempt from overtime as of January 1, 2025.

To qualify as exempt from overtime, employees must meet a three-prong test: (1) must perform duties that fall within one of the exempt classifications; (2) must be paid on a salaried basis, which generally means that they must be paid the same amount each week regardless of hours worked; AND (3) must be paid in an amount that satisfies the salary level threshold. Failure to meet these requirements means that the employee would not be exempt and would be entitled to overtime pay at 1.5 times of the employee's hourly rate for any hours worked in excess of 40 in a workweek.

This is not the first time the DOL has attempted to increase the salary threshold for the overtime exemption. The DOL's final rule issued in 2016 attempted to increase the overtime threshold to \$47,476 annually was enjoined by the U.S. District Court for the Eastern District of Texas on November 22, 2016, just days before the final rule was to take effect on December 1, 2016. That decision was appealed but has been held in abeyance since

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November 6, 2017 by the U.S. Court of Appeals for the Fifth Circuit pending further rulemaking regarding a revised salary threshold, therefore the 2016 rule never went into effect and the overtime regulations remained unchanged.

The new January 1, 2025 level of \$58,656 is a substantial increase from the prior \$47,476 amount set forth in the enjoined 2016 final rule. Similar to the enjoined 2016 final rule, employers will be allowed to use up to 10% percent of nondiscretionary bonuses and incentive payments (including commissions) to satisfy the salary level. Also, similar to the DOL's enjoined 2016 final rule, there will be an automatic adjustment to the salary threshold every three years.

The DOL's final rule, if not otherwise stayed by the courts, will go into effect July 1, 2024. If history is a reliable indicator, employers may want to consider staying the course until it is clear how this plays out in the courts. In the meantime, employers should prepare by analyzing how many currently "exempt" employees would be affected, should track the number of hours worked (regular and over 40 in a week) by currently "exempt" employees now paid between \$35,568 to \$58,656, and, most importantly, may want to consider strategies to mitigate the regulations' impact.

If you have any questions about this final regulation or the Fair Labor Standards Act or the types of strategies that can be implemented to manage overtime, please contact the author of this Client Alert, your Butzel Long attorney, or any member of the Labor and Employment Law Group.

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