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Final Overtime Regulation Released

Last week, the United States Department of Labor (DOL) released its finalized regulation on the salary threshold applicable to the executive, administrative and professional (“white collar”) exemptions to the Fair Labor Standards Act’s (FLSA) overtime rule. As background, in 2016, the Obama administration released a new proposed overtime regulation that would have increased the salary threshold from \$455 to \$913 a week, or \$47,476 a year. (In addition to meeting a duties test, to be considered exempt an employee must be paid on a salary basis, meaning no deductions for variations in the quality or quantity of work, and meet a minimum salary threshold.) The Obama administration’s regulations were blocked by a court prior to implementation.

In early 2019, the Trump administration released a new proposed rule that would increase the salary threshold from \$455 to \$679 a week, or \$35,308 a year. The proposed rule has now been finalized, and under the final rule, the salary threshold will change to \$455 to \$684 per week, or \$35,568 per year for a full-time worker (a small increase from the amount contained in the proposed rule). While this is a much smaller jump in the salary threshold than proposed by the Obama administration, it is still a substantial increase. In addition, the final regulation increases the threshold for exemption as a “highly compensated employee” from \$100,000 to \$107,432. (Employees reaching that salary threshold can be considered “highly compensated” without applying any of the FLSA duties tests.)

The final rule also provides that employers may use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10 percent of the standard salary level. If an employee does not earn enough in nondiscretionary bonus or incentive payments in a given year (52-week period) to retain his or her exempt status, the Department permits the employer to make a “catch-up” payment within one pay period of the end of the 52-week period. The new rule also drops the automatic increases to the salary threshold contained in the Obama era rule.

The final rule is effective January 1st, 2020. Employers should review their payroll practices and make any necessary changes to stay in compliance.

Please visit www.moreton.com/category/compliance-updates/ for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, Moreton & Company’s in-house corporate counsel who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.

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