

Overtime, Shmovertime

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The U.S. Department of Labor (DOL) announced a new rule change on May 18, 2016, significantly affecting the current overtime regulations under the Fair Labor Standards Act (FLSA).

The Final Rule from the DOL, which is effective December 1, 2016, increases the standard salary level and will expand overtime protections to an estimated 4.2 million workers.

Although the Final Rule includes three updates, the most prominent rule change is with respect to the overtime requirements. Currently, the FLSA requires that certain employees be paid at least the federal minimum wage for all hours worked, and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees paid on a salary basis at not less than \$455 per week, and who are employed as bona fide executive, administrative, professional and outside sales employees. In other words, employees were excluded from overtime pay if they were salaried and earned at least \$455.00 per week, or \$23,660.00, annually.

The new Final Rule now sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lower-wage Census Region, currently the South, and provides that any employees who are salaried and making up to \$913.00 per week, or \$47,476.00, annually, be paid overtime for any hours worked over 40 hours in a work week. This is quite a substantial increase in the salary level required to trigger the exemption status for employers and, as noted above, will require that many more employers will now have to pay overtime.

The Final Rule also changed the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full time salaried workers, nationally (\$134,004.00).

The Final Rule finally established a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption. Specifically, future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020, to keep up with inflation.

What does this mean for Pennsylvania Employers? The most obvious change is with respect to the salary level for overtime requirements. Employers who previously had the luxury of not paying overtime to salaried employees who earned over \$23,660.00 will now have to pay those employees who make up to \$47,476.00. As noted above, roughly five million workers will now be entitled to automatic overtime eligibility, which will effect a substantial amount of employers. This adds yet another wrinkle to the already complicated exemptions provided by the FLSA. Employers must also keep in mind that they will also have to determine whether those employees are also administrators, executives, or professionals.

Employers who do not pay these employees the required overtime amounts will be in violation of the FLSA requirements and be subject to penalties. Furthermore, it is imperative for employers to be up to date on these rules as the DOL will automatically update the salary levels every three years moving forward.

It is recommended that all employers contact experienced attorneys to ensure that they are in compliance with the continually changing minimum wage and overtime laws and to discuss the possible strategies to deal with this new rule.

The attorneys at Chartwell are ready to assist you in analysis of particular situations and to offer counsel on “best practices” to help minimize the risks of erroneous designations. For more information, please contact Robert Baker, Esquire.

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