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Department of Labor Issues New Changes to Overtime Rules

The U.S. Department of Labor (DOL) issued its long-awaited rule changes to the Fair Labor Standards Act's (FLSA) overtime requirements on September 24, 2019. Employers who have been operating under the existing 2004 rules have only a few short months to ensure compliance before the January 1, 2020 effective date.

What's Changed

As expected, the changes issued by the DOL raise the minimum salary required for overtime-exempt employees under the executive, administrative and professional exemptions and the annual compensation threshold for highly compensated employees. The new rules also address how employers are to treat nondiscretionary bonuses and incentive compensation (such as commissions). Summarized below are the changes to the 2004 standards:

- The minimum salary requirement for exempt employees has been increased from \$455 per week (\$23,660 per year) to \$684 per week (\$35,568 per year).
- The minimum annual compensation threshold for employees meeting the "highly compensated employee" exemption will increase from \$100,000 to \$107,432.
- The new rules allow employers to satisfy as much as 10% of the salary requirements with payments of nondiscretionary bonuses and incentive compensation, as long as such payments occur at least annually.

The changes are expected to affect 1.3 million currently exempt workers who will become eligible for overtime pay at their current salary level once the new rules take effect. Another 101,800 employees are expected to be affected by the changes to the highly compensated employee threshold.

The new rules also revise the special salary levels for workers in U.S. territories and in the motion picture industry.

Resolving A Period of Uncertainty

This rule change appears to resolve what has been a period of uncertainty for employers since similar rule changes were issued in 2016. The 2016 rulemaking was successfully challenged by various groups, ultimately resulting in an injunction barring implementation or enforcement of those changes and maintaining the 2004 salary levels. That litigation was stayed on appeal pending further rulemaking by the DOL.

The DOL's new rulemaking efforts strike a balance between the 2004 and 2016 salary levels. While the 2016 rule changes called for more significant increases in the minimum salary requirement for exempt employees and the highly compensated employee threshold, the change that drew considerable opposition was a provision providing for automatic increases in the minimum salary requirements every three years. Not only was this automatic increase provision left out of the final rules issued in September 2019, the DOL also formally rescinded the 2016 rules, effectively mooting the stayed appeal.

Takeaways

With these new standards expected to go into effect, it is likely that many previously exempt employees will suddenly be overtime eligible on January 1, 2020. The risk of future litigation for unpaid overtime is substantial should an employer fail to ensure compliance with the new rules. Employers are encouraged to work with trusted counsel over the next few months to assess what impact the rules may have on their companies' current compensation structures.

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