

Overtime Eligibility Expanded

Recent Changes to the Fair Labor Standards Act Regulations

The U.S. Department of Labor has updated its regulations establishing which workers are exempt from overtime and those who qualify for overtime under the Fair Labor Standards Act, by increasing the base salary level, while allowing employers to count certain incentives and bonuses, and providing for automatic increases in salary thresholds for overtime going forward.

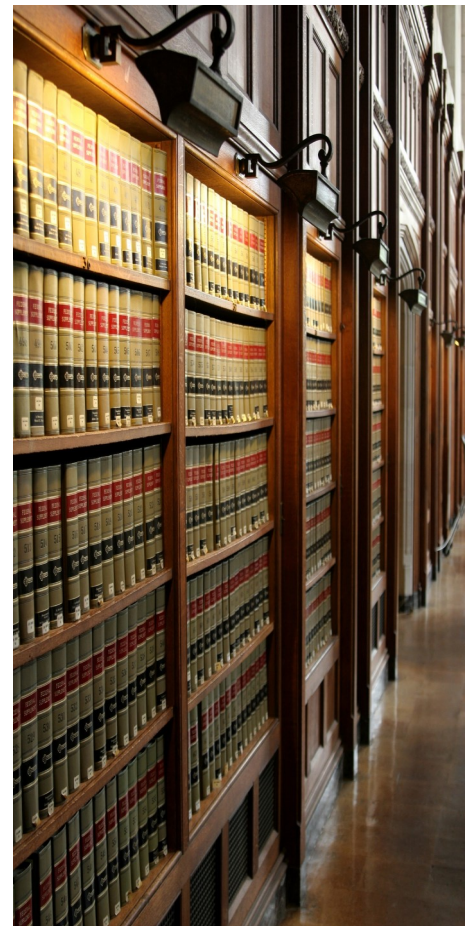
For more information about matters discussed in this issue, please feel free to contact Klein, Thorpe and Jenkins, Ltd.

Three part test (all must still be met):

- The standard “salary level test”:
 - ◇ The minimum salary threshold to be exempt from overtime *is increased* from \$455/week (\$23,660/yr) to \$913/week (\$47,476/yr). This represents the 40th percentile of the overall labor market.
- The “salary basis test”:
 - ◇ Must receive a predetermined, fixed salary that is not subject to reduction due to variation in quality or quantity of work.
- The “duties test”:
 - ◇ No changes have been made to the “duties test.” The categories of executive, administrative, professional and certain computer employees can be exempt.

Highly Compensated Employees:

- The new rule increases the total annual compensation requirement needed to exempt highly compensated employees from overtime payments. The threshold *is increased* from the former figure (\$100,000 annually) to the annualized value of the 90th percentile of full-time salaried workers (\$134,004 annually) with a minimal additional “duties” test.



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Automatic Updating:

- The minimum salary threshold automatically increases every 3 years to remain at the 40th percentile of the overall labor market of weekly earnings of full-time salaried employees.
- Employers are required to check every three years to see the new standard salary level and determine which, if any, employees qualify for overtime payment.
- The first automatic update will occur January 1, 2020.

Non-Discretionary Incentives and Bonuses

- Employers can use nondiscretionary compensation to count towards partial satisfaction of the standard salary threshold for the Executive/Administrative/Professional exemptions. For the first time, employers will be allowed to use non-discretionary bonuses and incentive payments to satisfy up to 10% of the Standard Salary Level.

The new regulation can be accessed at the following link and becomes effective December 1, 2016.

<https://www.dol.gov/whd/overtime/final2016/>



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