What CHROs Need to Know about DOL’s Final Overtime Rule

*Final Rule Significantly Increases Salary Level for White Collar Exemptions But Leaves Duties Test Unchanged*

On May 23, 2016, the Department of Labor (DOL) published a final rule updating the regulations governing which executive, administrative, and professional employees (white collar workers) are exempt from the Fair Labor Standards Act’s (FLSA) minimum wage and overtime pay requirements. The final rule significantly increased the salary level required for the “white collar” exemptions, but left the duties tests for the exemptions unchanged. Under the final rule, the salary level threshold will automatically increase every three years based on the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, which is currently the South. The final rule goes into effect on December 1, 2016.

According to the White House Fact Sheet on the final rule “We’re making more workers eligible for the overtime that you’ve earned. And it’s one of the single most important steps we can take to help grow middle-class wages.”

**Increases Salary Threshold For Overtime Exemption To $913 Per Week** The final rule increases the minimum salary for the FLSA “white collar” exemptions from the current $455 per week ($23,660 per year) to $913 per week ($47,476 per year). According to DOL, this will require employers to potentially review the FLSA classifications of up to 21.4 million salaried employees, and reclassify as nonexempt 4.2 million salaried employees at a cost of $593 million in 2016. However, DOL estimates that only 1.2 million employees might see some increase in their take-home pay. DOL also notes that employers could respond to the increased salary level by eliminating overtime hours, reducing the regular rate of pay so total weekly earnings do not change after overtime is paid, increasing some employees’ salaries to the minimum salary level, or paying overtime for the overtime hours worked.

**Indexes The Salary Threshold** The final rule also indexes the new $47,476 per year salary level threshold in such a way that it could increase to almost $72,000 by 2023, depending on how many employees are reclassified from salaried to hourly over the next seven years. Under the final rule, the salary level threshold will automatically increase every three years based on the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, which is currently the South. The more employees that companies convert from salaried to hourly pay, the greater the increase will be in the threshold over time. The first automatic increase is scheduled to occur on January 1, 2020, and DOL will announce the increase 150 days before the effective date.
Does NOT Make Any Changes To The Duties Tests  Notably, the final rule did not include any changes to the duties tests for the executive, administrative, or professional exemptions. The last time the overtime rules were updated in 2004, the DOL added a number of examples of exempt and nonexempt jobs to the “white collar” exemptions, including insurance claims adjusters, certain financial service employees, team leaders, human resource managers, physician assistants, dental hygienists, accountants, paralegals, and certain computer employees. Importantly, the 2016 final rule did not change or delete these examples, but it also did not add additional information to further guide employers in determining who is exempt and who does not meet the duties tests above the new salary threshold.

May Include Nondiscretionary Bonuses in Salary Level Test  DOL’s final rule also allows employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level threshold, or $4,747. However, the nondiscretionary bonuses and incentive payments must be paid on a quarterly or more frequent basis, with the option for employers to make a “catch-up” payment. Such payments may include, for example, nondiscretionary incentive bonuses tied to productivity and profitability. Previously, such bonuses were only included in calculating total annual compensation under the simplified duties test for employees who earn more than $100,000 per year (i.e., the highly compensated employee test).