

Anticipated Changes to the FLSA Overtime Regulations Are Here

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The Department of Labor (DOL) recently released final regulations making changes to the Fair Labor Stan-

dards Act (FLSA) provisions governing overtime exemptions.

Specifically, the DOL set a new salary threshold for overtime exemptions at \$47,476 a year, which is higher than California's current threshold of \$41,600. The DOL's new regulations will also raise the compensation requirement for the highly compensated employee exemption from \$100,000 to \$134,004 per year. These new rules will go into effect December 1, 2016.

The FLSA provides that certain employees are exempt from overtime requirements if their job duties and salary qualify them for one of the enumerated exemptions. In order to qualify for an executive, administrative or professional exemption, an employee must receive a specified minimum salary. Until recently, the FLSA's minimum salary requirement was \$455 per week, or \$23,660 annually. Under the DOL's new regulations, that minimum salary requirement for overtime exemptions will more than double to \$913 per week, or \$47,476 annually. Automatic updates to these salary

thresholds will also occur every three years beginning on January 1, 2020.

While these new DOL regulations require the close attention of employers throughout the nation, they are particularly worrisome for employers in California. The new federal salary requirement for overtime exemptions is now higher than California's current salary requirement of \$41,600 per year, which is double the current state minimum wage. Indeed, even with the impending changes to California's state minimum wage beginning on January 1, 2017, California's salary basis requirement will not catch up to the federal level until at least 2019, when the state minimum wage will be \$12 per hour.

Because the federal salary level is now higher, California employers may need to raise employees' salaries or reclassify employees as non-exempt to avoid liability under the FLSA. For California employers, the days of narrowly focusing on California salary requirements for exemptions are in the past. Now employers must pay attention to impending changes to the salary threshold under both California and federal regulations.

These new regulations will have a dramatic effect on many employers who will have to reclassify employees or increase salaries based on the new salary requirement. Given the lack of public participation usually required by the regulatory process, it will be interesting to see what legal challenges are made to the new regulations. In the meantime, it is important that California employers prepare to comply with the new regulations and avoid potential exposure for misclassifications.

SALARY THRESHOLD FOR OVERTIME EXEMPTIONS

DOL

\$47,476

Current California

\$41,600

DOL COMPENSATION REQUIREMENT FOR THE HIGHLY COMPENSATED EMPLOYEE EXEMPTION INCREASE

\$100,000

► **\$134,004**

MINIMUM SALARY REQUIREMENT

past FLSA

\$455 /wk or **\$23,660** yr

DOL

\$913 /wk or **\$47,476** yr