



## New Department of Labor Rule Expands Overtime Eligibility

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On September 24, 2019, the Department of Labor announced its final rule updating the salary threshold necessary to exempt certain employees from the Fair Labor Standards Act's minimum wage and overtime requirements. While the final rule leaves in place the job duties test, it raises the salary threshold from \$23,660 to \$35,568 (or \$684 per week). The Department of Labor indicated that the new salary threshold accounts for growth in employee earnings since the rule was last updated back in 2004. The final rule will take effect on January 1, 2020, giving employers only a few months to identify any currently exempt employees who are paid less than the new salary threshold and determine if those employees should be given a raise or reclassified as non-exempt.

The FLSA exemption salary threshold for executive, professional and administrative employees has been under review for several years. In 2016, the Obama administration proposed a salary threshold of \$47,476. This final rule was blocked by a Texas federal court before it could take effect. In 2017, the Department of Labor issued a request for information regarding potential impact of changing the threshold. In March of 2019, the Department proposed a salary threshold of \$35,308 per year (or \$679 per week). The final rule saw a slight increase from the March proposal. However, the March 2019 proposal also included raising the total annual compensation requirement for highly compensated employees from \$100,000 to \$147,414. The final rule only raises this threshold to \$107,432 per year. Additionally, the final rule allows employers to use nondiscretionary bonus and incentive payments (including commissions) that are paid at least annually to satisfy up to 10% of the standard salary level.

Notably, the March 2019 proposed rule included updates to the salary levels every four years. The final rule, however, does not include automatic increases. As it is, the Department estimates that the change to the salary threshold for FLSA exemptions will make 1.3 million American workers newly eligible for overtime pay. It remains to be seen whether any lawsuits will be filed challenging the latest version of the Department of Labor's final rule. Burr & Forman will continue to monitor developments and provide further updates as needed.

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