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U.S. Department of Labor Issues Final Overtime Rule

The long-awaited final rule on the salary threshold for exempt executive, administrative and professional employees under the Fair Labor Standards Act (FLSA) is finally here. Today, the U.S. Department of Labor (DOL) announced that it would be raising the standard salary level from the currently enforced level of \$455 per week to the new amount of \$684 per week. This will increase the annual salary threshold from \$23,660 to \$35,568 for a full-year exempt worker.

The DOL will also raise the total annual compensation requirement for highly compensated employees (HCE) from the currently enforced level of \$100,000 per year to \$107,432 per year. Other changes include “allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, in recognition of evolving pay practices; and revising the special salary levels for workers in U.S. territories and the motion picture industry.”

This final rule was submitted for publication in the Federal Register, which will be the official version once published, and may vary slightly if minor changes are made during the publication process.

The final rule will become effective on **January 1, 2020** and marks the first increase to the salary threshold since 2004. The increase is also a more moderate approach to adjusting the salary level than the previous proposed increase in 2016 under President Obama’s administration, which sought to adjust the minimum salary threshold to \$47,476 and the HCE salary to \$134,004. The 2016 rules were blocked by an injunction from a U.S. District Court just days before they were to take effect. That ruling was appealed to the Fifth Circuit Court of Appeals but the DOL, under President Trump’s administration, eventually determined it would not seek to reinstate the high salary threshold proposed by the Obama administration.

This revised final rule is not expected to propose any changes to the standard duties tests for the executive, administrative and professional exemptions under the FLSA.

Finally, the DOL anticipates it will continue to update the standard salary level for exempt employees and HCE total compensation levels more frequently in the future using notice-and-comment rulemaking every four years.

If your organization has any questions regarding this final rule or its impact to the workforce, or needs assistance in evaluating exemptions under this new final rule, please contact a member of Kutak Rock’s [FLSA Litigation and Wage and Hour Defense Group](#), a member of the [Labor and Employment Practice](#), or your Kutak Rock attorney. You may also visit us at www.KutakRock.com.

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