U.S. Department of Labor Issues Final Rule That Increases Salary Threshold For Overtime Exemption Under The Fair Labor Standards Act Effective January 1, 2020

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On September 24, 2019, the U.S. Department of Labor (DOL) issued a final rule that will increase the threshold salary requirement necessary for employees to be exempt from minimum wage and overtime requirements under the Fair Labor Standards Act (FLSA).

In most instances, the FLSA requires employers to pay an overtime premium to employees who work over forty hours in a single workweek. The FLSA provides certain exemptions from overtime pay, such as for administrative, executive, and professional employees who are paid on a salaried basis (the so-called white collar exemptions). The final rule makes a fairly limited, yet significant, set of changes to the existing requirements.

Under the DOL's final rule, the standard salary level for exempt employees will increase from $455 per week to $684 per week, which is the equivalent of $35,568 annually (an increase from $23,660). To meet this threshold, employers will be permitted to use non-discretionary bonuses or incentive payments (including commissions) that are paid at least annually to satisfy up to ten percent (10%) of an employee's standard annual salary requirement.

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Employers will also be permitted to make a "catch-up" payment to salaried employees who do not earn enough in non-discretionary bonuses or incentive pay in a given year. In addition, the salary threshold for the "highly compensated employee" exemption will increase from $100,000 to $107,432 (though employers should keep in mind that this exception does not apply in certain States, such as Illinois). The DOL also announced that it intends to adjust these salary thresholds more frequently in the future.

Employers should recognize that the DOL has not changed any of the applicable "duties tests" for white-collar exempt positions. Nor has the Agency made any other changes to requirements applicable to "computer exempt" employees, outside sales positions, or any other exemptions.

Employers who recall the DOL's prior effort in 2016 to increase salary thresholds under the FLSA should not expect that this will be "déjà vu all over again." At this time, we anticipate the dismissal of pending litigation relating to the 2016 changes. Presumably, the DOL would not have issued this final rule if it expected another lawsuit, but this remains to be seen.

Assuming that nothing is done to change the requirements, the final rule goes into effect on January 1, 2020. In the next 90 days, employers should carefully evaluate data relating to salaried, exempt employees who are currently earning close to, but less than the new salary threshold. Employers might want to consider increasing salaries or creating bonuses or incentive pay programs to meet the new rule, or consider treating some of these positions as non-exempt.

Before making significant pay changes, employers should carefully review job descriptions for affected employees to make sure that they meet the applicable duties tests and all applicable requirements. In cases when employees will be treated as non-exempt beginning January 1, employers should update affected job descriptions and be prepared to limit the risk of unexpected increased labor costs. Employers who are considering changing compensation structures should also take into account any benefits-related issues that may come up in connection with these decisions.

Please contact any Laner Muchin attorney with whom you have a relationship if you have questions or concerns about these changes or would like guidance on what steps to take to prepare for these new rules.