

DOL Final Overtime Rule Doubles White Collar Exemption Salary Threshold; Changes May Affect PAC Solicitable Class

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By D. Mark Renaud and Jillian D. Laughna

On Tuesday, May 17, the White House and Department of Labor (DOL) announced the publication of the anticipated final rule updating the “white collar” exemption to the Fair Labor Standards Act’s (FLSA) minimum wage and overtime pay requirements.

The final rule focuses primarily on updating the salary and compensation levels needed for executive, administrative, and professional workers to be exempt from the FLSA’s overtime and minimum wage requirements. No changes were made to the “duties test.” These changes, as we discussed in a [July 2015 article](#), may dramatically affect those available to be solicited for corporate PACs.

Key features of the final rule include:

- **Raising Standard Salary Level.** Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South to \$913 per week or \$47,476 annually for a full-year worker (this change does not alter the duties test or the salary/non-salary divide per se, but the change may push many employers to pay more employees on an hourly basis, which would make such employees ineligible to contribute to a federal PAC unless they also were stockholders);
- **Highly Compensated Employee (HCE) Total Annual Compensation Requirement.** Sets the total annual compensation requirement for HCEs subject to a minimal duties

Authors

D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law

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test to the annual equivalent of the 90th percentile of full-time salaried workers nationally to \$134,004;

- **Automatic Updating.** Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles; and
- **Inclusion of Nondiscretionary Bonuses and Incentive Payments.** Amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments, including commissions, to satisfy up to 10 percent of the new standard salary level.

The effective date of the final rule is December 1, 2016. The initial increases to the standard salary level (from \$455 to \$913 per week) and HCE total annual compensation requirement (from \$100,000 to \$134,004 per year) will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

Although the Office of Management and Budget (OMB) has reviewed and approved the final rule, the document has not yet been published in the Federal Register and is scheduled to be published on May 23. DOL has drafted fact sheets and guidance for small businesses, non-profits, and higher education institutions which can be found here: <https://www.dol.gov/whd/overtime/final2016/>. We will keep you updated on further developments.