

CLIENT ALERT

DOL PUBLISHES FINAL RULE REVISING FLSA OVERTIME EXEMPTIONS

On May 18, 2016, the U.S. Department of Labor (“DOL”) published the final rule updating the overtime regulations (the “Final OT Rule”). The Final OT Rule raises the minimum salary that must be paid for an employee to be exempt from the overtime pay requirements of the Fair Labor Standards Act (“FLSA”) to \$47,476 annually effective 12/1/2016, and accordingly, will result in more employees being entitled to overtime pay for hours worked over 40 in a single workweek.

Per the Final OT Rule, effective 12/1/2016, the minimum salary that must be paid to an employee for that employee to qualify for the Administrative, Executive or Professional exemption increases to \$913 per week (\$47,476 annually). The Final OT Rule does not affect the existing requirements that an employee must also meet specific duties tests to qualify for the Administrative, Executive or Professional exemption. However, in order to meet the new salary threshold, employers may now use non-discretionary bonuses (for example, those tied to productivity or profitability) and incentive payments (including commissions) to satisfy up to 10% of the new minimum salary threshold, with certain restrictions. This means you can pay an exempt worker a salary of \$821.71 per week (\$42,729 annually) as long as she additionally earns \$4,747 in non-discretionary bonuses/incentive payments annually and such non-discretionary bonuses/incentive payments are paid on a quarterly or more frequent basis.

Additionally, the minimum annual total compensation an employee must earn to qualify for the Highly Compensated Employee (“HCE”) exemption will increase to \$134,004 per year on 12/1/2016 – that is, salary plus non-discretionary bonuses/incentive payments must total \$134,004 annually. However, to be exempt as an HCE, the employer must pay the employee a minimum salary of \$913 per week, without regard to non-discretionary bonuses and/or incentive payments, and pass a minimal duties test.

Lastly, going forward, the salary thresholds will adjust every three years, beginning on January 1, 2020. The minimum Administrative, Executive and Professional threshold will be equal to the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (currently the South). The Highly Compensated Employee threshold will be equal to the annual equivalent of the 90th percentile of full-time salaried workers nationally.

Employers should immediately review the salaries currently paid to their exempt employees and determine whether to raise salaries, implement non-discretionary bonuses, pay overtime or make no change.

If you have questions or would like additional information, or would like assistance in auditing and updating your pay practices with respect to exempt employees, please contact Amanda M. Fugazy (afugazy@egsllp.com), Paul P. Rooney (prooney@egsllp.com), Valerie J. Bluth (vbluth@egsllp.com) or the primary EGS attorney with whom you work.

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