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## USDOL Publishes New Rules To Take Effect December 1, 2016 Dramatically Changing Overtime Laws

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On May 18, 2016, President Obama and the USDOL Secretary Thomas E. Perez announced the publication of new rules that implement key changes to the overtime rules that will dramatically increase the number of workers who work more than 40 hours a week and are entitled to overtime pay under the Fair Labor Standards Act.

The new rules, which become effective December 1, 2016, substantially increase to \$913 per week (\$47,476 annually) the salary threshold minimum an employee must earn to qualify as an exempt employee. This minimum salary must be paid to an employee in order to qualify for the administrative, executive or professional exemption. In addition to satisfying the new salary threshold, the employee must also satisfy the long-standing traditional duties tests to qualify for the administrative, executive or professional exemption, which remain unchanged under the new rules.

Under the new rules, 10% of the new minimum qualifying salary, can be satisfied by including non-discretionary bonuses and incentive payments (including commissions) subject to certain restrictions. More specifically, under the new rule an employee who meets the other requirements to qualify as an exempt employee, and is paid a salary of \$821.71 per week (\$42,729 annually) and may be exempt from the overtime laws if that employee additionally earns \$4,747 in non-discretionary bonuses/incentive payments annually and such non-discretionary bonuses and incentive payments are paid on a quarterly or more frequent basis.

The new rules also increase to \$134,004 the minimum annual salary a worker must earn to qualify as an exempt under the Highly Compensated Employee exemption. While this annual salary level may also include non-discretionary bonuses and incentive payments, to qualify under this particular exempt category, the employee must earn a minimum of \$913 weekly salary and meet the standard minimal duties test.

Commencing January 1, 2020, the above minimum salary threshold for exempt workers will adjust periodically, every three years. The minimum administrative, executive and professional level will be calculated the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (which currently is the South), while the Highly Compensated Employee level will correspond to the annual equivalent of the 90th percentile of the full-time salaried workers nationally.

Although the Office of Management and Budget has approved the final rules, they have not yet been published in the Federal Register.

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