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Final Rule Released Changing the Salary Thresholds for the Overtime Exemption.

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Today the Department of Labor made a big change to the overtime rules. The Fair Labor Standards Act (öFLSAö) requires that most employees in the United States be paid at least the federal¹ minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek, unless they fall within one of the enumerated exemptions. There are three (3) main exemptions to minimum wage and overtime requirements for employees employed as bona fide executive, administrative, professional. (There are also exemptions for computer professionals and outside sales people among other specific job classifications).

There are two main tests to determine if the exemption applies: (1) the salary basis test; and (2) the duties test. Today, the Department of Labor (öDOLö) issued a Final Rule changing the regulatory requirements of the salary basis test, effective December 1, 2016. So far no change has been made to the duties test, although it is under consideration.

Under the current salary basis test, to claim the exemption, the employee must be paid a salary or a fee basis of not less than \$455 per week or \$23,660 per year. Effective December 1, 2016, the salary threshold is increased to \$913/week or \$47,476/year. That means that any employees not paid at least \$47,476 in gross salary a year are not eligible for the exemption. The proposed regulations had called for a yearly automatic increase to the salary threshold, but the final rule did not do that. Instead, the threshold increases are slated for every three years to maintain the salary threshold at the 40th percentile in the lowest wage census region.

Even if the employee meets the salary threshold of \$47,476/year, they must also still meet the duties test for the exemption to apply. The following is a summary of the duties tests for the executive, administrative and professional exemption. This is only a summary and a specific fact based analysis should be done before concluding whether the exemption applies.

¹ Because Michigan's minimum wage of \$8.50 is higher than the federal minimum wage of 7.25, Michigan's rate governs. If the federal minimum wage rate were increased beyond the Michigan rate, then the federal rate would govern.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- É The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than ~~\$455~~ \$913 per week (as of 12/1/16);
- É The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- É The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- É The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemption

To qualify for the administrative employee exemption, all of the following tests must be met:

- É The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than ~~\$455~~ \$913 per week (as of 12/1/16);
- É The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- É The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the learned professional employee exemption, all of the following tests must be met:

- É The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than ~~\$455~~ \$913 per week (as of 12/1/16);
- É The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- É The advanced knowledge must be in a field of science or learning; and
- É The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the creative professional employee exemption, the same requirements apply as the regular professional exemption except the employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

The final rule also changed the salary threshold for the highly compensated employee exemption. The salary threshold was increased from \$100,000 to \$134,004 per year setting the threshold at the 90th percentile of full time salaried workers nationally. A highly compensated employee is deemed exempt if they meet the salary threshold and (1) the employee's primary duty includes performing office or non-manual work; and (2) the employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

This change means that many previously exempt employees will now be subject to minimum wage and overtime requirements for all hours worked in excess of 40 hours in a work week. These employees will now have to record their hours worked and be paid overtime if they work overtime. This will increase payroll expense for many employers or they will have to change how they do business to prevent employees from working overtime. Some employers may choose to give their employees a pay raise to raise their salary threshold into the exemption limit.

Feel free to contact us with any questions about how this new change will affect your business. December 1, 2016 seems far away, but it will be here before you know it. Current estimates predict more than 12 million workers will be affected by this change.

We are happy to assist you with preparing for this change and reviewing your current wage and hour practices for compliance with overtime and other wage and hour requirements.

*** Note this article is meant to be informational only and does not create an attorney client relationship, nor is it intended as specific legal advice. It is recommended that you seek specific legal advice for any questions or concerns you have about the changes to the law.