

NEW MINIMUM SALARY REQUIREMENT WILL EXPAND NUMBER OF WORKERS ELIGIBLE FOR OVERTIME PAY

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The Department of Labor (“DOL”) recently increased the minimum salary required for workers to be exempt from the minimum wage and overtime pay requirements of the Fair Labor Standards Act (“FLSA” or “Act”) from \$23,660 per year to \$35,568 per year. Because the new minimum salary goes into effect on January 1, employers should act now to ensure their timely compliance and avoid the costly consequences of violating the FLSA.

CLASSIFICATIONS OF EMPLOYEES EXEMPT FROM MINIMUM WAGE AND OVERTIME REQUIREMENTS

The FLSA generally requires that employers in the United States pay their employees at least the federal minimum wage for all hours worked and overtime pay of not less than one and one-half times an employee’s normal hourly rate for all hours worked in excess of 40 hours in a workweek; however, the Act creates an exemption from the minimum wage and overtime requirements for certain classifications of employees – e.g., executive, administrative, and professional – commonly referred to as “exempt employees.” When an employee is properly classified as exempt, the FLSA’s minimum wage and overtime pay requirements do not apply to him or her.

To qualify as exempt under one of the FLSA’s classifications, an employee must satisfy certain requirements, which vary depending upon the classification at issue and generally focus on the employee’s job duties; however, one requirement is the same across the board for executive, administrative, and professional employees. For an employee to be properly classified as exempt under any one of those classifications, he or she must be paid a certain minimum salary. Currently, that minimum salary is \$455 per week, which is equivalent to \$23,660 per year for a full-year worker.

MINIMUM SALARY INCREASE EFFECTIVE JANUARY 1, 2020

Effective January 1, the minimum salary for exempt employees increases to \$684 per week, which is equivalent to \$35,568 per year for a full-year worker – nearly \$12,000 higher than the current level. After December 31, 2019, no employee who is paid less than \$684 per week will be exempt from the FLSA’s minimum wage and overtime requirements.

INCREASE’S EFFECT ON REQUIREMENTS FOR “HIGHLY COMPENSATED EMPLOYEES”

The DOL is also changing the rule for “highly compensated employees,” another category of employees who are exempt from the FLSA’s minimum wage and overtime requirements. Under the Act, an employee who may not otherwise satisfy the job duty requirements to be exempt as an executive employee can qualify as exempt if, among other things, he or she is paid certain total annual compensation. Currently, that amount is at least \$100,000 per year and must include at least \$455 per week paid on a salary or fee basis; however, on January 1, that amount will increase to \$107,432 per year and must include at least \$684 per week on a salary or fee basis. After December 31, 2019, if an employee does not satisfy this income requirement, he or she is no longer exempt from the Act’s minimum wage and overtime requirements as a “highly compensated employee.”

EMPLOYERS SHOULD ACT NOW TO BE IN COMPLIANCE ON JANUARY 1, 2020

On January 1, 2020, an estimated additional 1.3 million American workers will be entitled to federal minimum wage and overtime pay because they are not paid at least \$684 per week. To prepare for the impending increase in the minimum salary, employers must identify those employees who are currently classified as exempt but who earn below the \$684 per week threshold. To ensure continued

FLSA compliance with respect to those employees, an employer has two options: (1) keep the employees eligible for the relevant exemptions by giving them raises that bring them up to the new minimum salary; or (2) re-classify them as nonexempt hourly workers who are entitled to the federal minimum wage and overtime. Each of these options likely creates significant practical questions that an employer must carefully consider. For example, does the employer's bottom line allow it to implement raises sufficient to satisfy the new earnings threshold? Or, if an employer reclassifies its employees as nonexempt, will a previously exempt employee be able to fulfill his or her job duties without incurring substantial and expensive overtime hours?

Given the January 1, 2020 effective date, the window of opportunity to make these important decisions is closing. It is essential that employers take action to be sure that they comply with the minimum salary requirements by that date. Additionally, assessing the options with respect to the impending change is a good opportunity for an employer to revisit its employees' job duties and determine whether they satisfy other requirements for the relevant exemptions.

The consequences of violating the FLSA's minimum wage and overtime requirements can be costly. In addition to permitting lawsuits brought by underpaid workers, the Act empowers the DOL to conduct audits and bring enforcement actions against employers, seeking back wages, liquidated damages, and civil money penalties – and recent trends suggest that the DOL is likely to be aggressive in enforcing the new earnings requirements. In October 2019, the DOL announced that its Wage and Hour Division – which enforces the FLSA – collected a record \$322 million dollars from employers during fiscal year 2019 - amounting to an \$18-million increase over the agency's collections during the same period in 2018. Given that the 2018 amount was itself a record, all signs point to continued aggressive DOL enforcement activity.

ADDITIONAL INFORMATION

For more information, please contact:

- [Melissa Kelly](mailto:melissa.kelly@tuckerellis.com) | 216.696.2067 | melissa.kelly@tuckerellis.com
- [Christine Snyder](mailto:christine.snyder@tuckerellis.com) | 216.96.5593 | christine.snyder@tuckerellis.com
- [Tom Simmons](mailto:thomas.simmons@tuckerellis.com) | 216.696.5290 | thomas.simmons@tuckerellis.com