

# Here We Go Again – For The Second Time – DOL Unveils Final Overtime Rule

## Description

On Tuesday, September 24, 2019, the United States Department of Labor (“Department”) announced its much anticipated Final Rule raising the salary threshold necessary to exempt certain executive, administrative, and professional employees from receiving overtime pay under the Fair Labor Standards Act (“FLSA”). The Final Rule is set to take effect on January 1, 2020. The Department estimates that the Final Rule will render an additional 1.3 million workers eligible for overtime pay.

By way of background, the FLSA mandates employers to compensate employees at a rate of one and one-half (1 ½) times their regular rate of pay (“overtime pay”) for all hours worked in excess of 40 each week. Under the FLSA’s executive, administrative, and professional exemptions (“White Collar exemptions”) employees are exempt from overtime pay if they are able to pass a “Salary” Test and a “Duties” Test. The Final Rule affects only the Salary Test with the Duties test remaining unchanged.

As we previously [wrote](#), on March 7, 2019, the Department had announced the original proposed version of the Final Rule. While most of the provisions within the Final Rule are identical to those contained in the Department’s proposed version, the Final Rule does differ from the proposed version in some aspects.

### **\$229 Increase to Salary Threshold for “White Collar” Employees**

As expected, the Final Rule increases the minimum salary with which employees must be compensated in order for them to qualify for one of the White Collar exemptions. Specifically, the Final Rule increases the minimum salary by \$229 per week from the currently-enforced level of \$455 per week to **\$684 per week**, which equates to \$35,568 per year. Employees making less than this amount will fail the White Collar exemption Salary Test and therefore cannot be exempt from the FLSA’s overtime requirements. While the Salary Test threshold is being increased, the Final Rule does allow employers to use nondiscretionary bonuses and incentive payments, including commissions, to satisfy up to 10 percent of the threshold as long as such payments are made at least annually (or more frequently).

### **Slight Increase to Salary Threshold for “Highly Compensated Employees”**

The Final Rule includes a small raise to the minimum annual salary with which employees must be compensated in order for them to be eligible for the “Highly Compensated Employee” (“HCE”) exemption from the currently-enforced level of \$100,000 per year to **\$107,432 per year**. Interestingly, this \$107,432 figure is nowhere near the \$147,414 figure that was originally included in the proposed version of the Final Rule. Employees designated as “highly compensated” are subject to a less stringent Duties Test (essentially instead of having to pass the entire Duties Test, an HCE employee only has to customarily and regularly perform *at least one* of the duties or responsibilities of an exempt executive, administrative, or professional employee). The Department estimates that an additional 101,800 HCE’s will become entitled to overtime pay as a result of this increase.

### **Salary Threshold for Employees in U.S. Territories**

The Final Rule establishes a special salary level of \$455 per week for executive, administrative, or professional employees in Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana

Islands. However, the minimum salary for the same employees in American Samoa will remain at \$380 per week.

### **The Department Intends to Update Salary Thresholds “Regularly”**

The Department reaffirms in the Final Rule its intent to update the White Collar exemption salary threshold and the minimum HCE annual salary requirement “more regularly in the future” based upon “prevailing economic conditions, rather than fixed timelines[.]” The Department declined to adopt a provision within the proposed version of the Final Rule calling for updates once every four years.

### **But Wasn’t the Previous Increase to the Salary Threshold Blocked from Taking Effect?**

Yes. In 2016, the Department under President Obama proposed a larger increase to the salary threshold for White Collar employees, but in November of 2016 (weeks before the new rule was to take effect) a Federal District Court in Texas blocked the Obama-era rule from taking effect. While there are rumblings that there may be similar attempts to block this Final Rule, the grounds upon which to do so appear far more limited than in the past. Only time will tell whether the Final Rule will be challenged in Court in the coming months.

Whether the Final Rule is challenged or not, employers would be wise to plan ahead if they currently have executive, administrative, or professional full-time employees who will not pass the new Salary Test. Employers that wish to retain their White Collar employees’ exempt status have several options in responding to the Final Rule—two of which include increasing salaries to retain exempt status or reducing or eliminating overtime hours.

The [Partridge Snow & Hahn Employment Law Team](#) is fully updated on these and other related issues and is available to answer to your questions.

#### **Date Created**

September 27, 2019