Laurie Rogers

Partner
303.473.2866
Boulder
LSRogers@hollandhart.com

New Overtime Rule Raises Annual Salary Threshold to $35,568

Insight — September 25, 2019

On September 23, 2019, the U.S. Department of Labor (DOL) issued its Final Rule relating to exemptions and overtime. The most significant change for employers is an increase to the salary threshold for exempt employees up to $35,568 from the $23,660 threshold established in 2004. The new rule, set to take effect on January 1, 2020, likely means an additional 1.3 million workers will now be compensated for working overtime.

Key Takeaways from the Final Rule

- Raises the salary threshold to $684 per week ($35,568 per year) from the currently enforced level of $455 per week ($23,000 per year).
- Modifies the total annual compensation threshold for Highly Compensated Employees to $107,432 from the current threshold of $100,000.
- Recognizes evolving pay practices by allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10 percent of the standard salary level.
- Revises the special salary level for U.S. Territories and motion picture industry workers.

What Employers Should Do Now To Prepare

The new salary threshold means that currently exempt employees who receive a salary of less than $35,568, in most cases, will become nonexempt employees in 2020. Employers have three months to properly classify their employees under the new standards to ensure compliance with the Fair Labor Standards Act (FLSA). Employers can use the following checklist to start preparing for the new regulations now:

- **Identify positions impacted by the salary increase.** Make a list of all employees who make less than $35,568.
- **Determine the number of hours worked by impacted employees.** Audit 2019 hours worked by current employees, including currently exempt employees if you had a tracking system, affected by the salary threshold increase. Calculate the cost of overtime had you paid it to these employees last year. If you do not have data of hours worked for your exempt employees, look for

possible substitute indicators like computer log ins or security swipes/entry to your facility.

- **Conduct a cost analysis.** Calculate the cost of reclassifying employees as nonexempt and paying overtime, and the cost of increasing salaries above the new threshold. Consider all sources of income, including nondiscretionary bonuses and incentive payments. Compare the costs and analyze the financial impact to your company's bottom line.
- **Communicate changes effectively.** Consider employee morale and the likely perception among reclassified employees that a change to nonexempt status is a demotion. Be thoughtful with your communication strategy. Explain that changes are a result of new federal regulations.
- **Evaluate timekeeping policies and procedures.** Many of your new nonexempt employees may never have used timesheets or software and applications that track time. Make sure your policies are up-to-date and clearly communicate timekeeping expectations.
- **Train employees and supervisors.** Newly nonexempt employees and those who supervise them will need training on the timekeeping tools and policies.
- **Note that some states impose higher salary thresholds.** California and New York employers are subject to higher salary thresholds to meet state law exemptions. Washington and Pennsylvania also have proposed increases on the table.

Seek Advice

Employers are not alone. Holland & Hart's Labor and Employment team is here to help walk clients through this process, provide advice and guidance, and suggest practical solutions as employers make necessary changes to be compliant by January 2020. Do not hesitate to reach out to any of our team members for assistance.
