

CHANGES TO THE FAIR LABOR STANDARDS ACT MAY AFFECT EMPLOYEE BENEFITS

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The United States Department of Labor recently issued a Final Rule updating the Fair Labor Standards Act (the “FLSA”) that includes an increase in the standard salary level and that will take effect December 1, 2016. Under the FLSA, certain employees may be exempted from overtime pay for working more than 40 hours per week if their job duties primarily involve executive, administrative, or professional duties and their salary is equal to or greater than the required salary levels.

Among other changes made by the Final Rule, the threshold salary levels have been dramatically increased and will continue to be automatically updated every three years in the future. Prior to the Final Rule, the standard salary level was \$455/week or \$23,660/year. As of December 1, 2016, the standard salary level will be \$913/week or \$47,476/year. Highly compensated employees are subject to a less stringent job duties test than lower compensated employees; the salary threshold for highly compensated employees was \$100,000 and will increase to \$134,004.

The Final Rule also revises prior FLSA regulations by permitting up to ten percent (10%) of the salary thresholds to be met with nondiscretionary bonuses and incentive compensation (including commissions).

Employers may face many other decisions in addition to whether to increase pay or limit overtime hours as a result of the Final Rule. Many employers offer certain benefits, like long-term disability or paid time off, to employees on the basis of whether the employee is exempt or non-exempt under the FLSA. As employees’ classifications change, their benefits will change accordingly unless employers decide to make corresponding changes to benefits eligibility.

Employers will also need to revisit their retirement plans to confirm whether overtime pay is eligible for employer contributions, including matching contributions; if so, employers should plan ahead for increased contributions. Further, if overtime pay is excluded, employers should be aware of potential nondiscrimination testing issues (as a result of non-highly compensated employees becoming newly eligible for and receiving overtime pay).

Finally, increased overtime costs may require employers to reduce other employee benefits or require greater employee contributions for such benefits to stay on budget for the year. Regardless of its exact impact on your business, the Final Rule is sure to require some changes. Start planning now; December 1st will be here before you know it!

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