

Client Alert for March 2019
NEW DOL EXEMPT SALARY THRESHOLD: \$35,000
Only Nine Months to Get Ready: Responsibility is on Employer!

Are you paying your salaried exempt employees \$35,000/year yet? That is what the Department of Labor (DOL) released as the new proposed exempt threshold —Thursday, March 7, 2019.

DOL proposed increasing the weekly salary level from \$455 (\$23,660 per year) to \$679 per week (\$35,308 per year). The new threshold would go into effect January 2020—less than one year from now!

The chances the new rule goes into effect are **very high** considering DOL's last proposal to increase the salary threshold to \$913 (\$47,476 per year) passed during the Obama Administration in 2016. This new proposal appears to be middle ground and is likely to go forward.

With less than nine months before the effective date, you may want to think about assessing your payroll (especially lower-level managers).

There are a lot of ways employers can get employee compensation to the new threshold. DOL proposed permitting up to 10% of the \$679 per week amount to come from non-discretionary bonuses, incentives and commissions that are paid annually or more frequently. DOL also proposed allowing employers to have a "cure" opportunity.

Using this opportunity, employers can make one final payment to reach the required level no later than the next pay period after the end of the year (or any set 52 week period) if the employee's yearly pay is below threshold.

If employers cannot get formerly exempt employees to the new \$35,000 threshold, then these employees are entitled to overtime for all hours worked over 40 per week. In these cases, employers should consider other options such as restructuring work schedules and re-distributing job duties.

Highly Compensated Employees

DOL also proposed to raise the threshold for the "highly compensated" employee exemption to \$147,414.

Reminder: Determining Exemptions Step-by-Step

1. Consider the employee's duties—not the salary. Essentially job titles, job descriptions, or the payment of salary instead of an hourly rate are not sufficient enough on their own to give exempt status to an employee.
2. Determine if all other exemption requirements are met, i.e. salary basis. Are they paid their full salary for any week in which they do any work, regardless of how few or how many hours they work?
3. If an exemption is proper, decide if it is worth it. You can classify exempt employees as non-exempt but you cannot do the reverse. Many employers find paying an exempt employee a salary to be not worth it even though a valid exemption exists. For instance, this may happen with employees who work limited hours or are part-time. In these cases, it is generally more practical (and less costly) to pay them on an hourly basis.

That being said, the times are a-changing! It is never too early to reconsider job descriptions, job duties, and new opportunities for getting exempt employees to the new salary threshold. **The fundamental rule is it is always the employer's responsibility to ensure complete compliance with the FLSA.** If you have any questions or there is grey area as to whether an exemption applies, call on us.

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