

CLIENT NEWS BRIEF

Increase in Minimum Salary for Employees to be Exempt from Overtime Pay

On May 23, 2016, the United States Department of Labor published updated overtime regulations that increase the minimum salary amount necessary for employees to be exempt from overtime pay requirements. The updated regulations (Final Rule) will take effect on December 1, 2016.

The federal Fair Labor Standards Act of 1938 (FLSA) requires an employer to pay an employee at an overtime rate if the employee works more than 40 hours in one week. Employees can be exempt from the FLSA overtime rules if:

- 1) They are paid a fixed salary (salary basis test);
- 2) The salary is at or above the government-set salary level (salary level test); **and**
- 3) The employment is in an executive, administrative or professional capacity, as defined by the FLSA.

The Final Rule makes the following changes:

- Increases the salary and compensation levels for the salary level test from \$455 per week, or \$23,660 annually, to \$913 per week, or \$47,476 annually. The salary level test now allows use of non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.
- Increases the annual salary requirement for highly compensated employees (HCE) subject to a minimal duties test. The new salary requirement is \$134,004 annually for a full-time employee. The expiring rule set the salary level at \$100,000 annually for a full-time employee.
- Creates a method for automatically updating the salary and compensation levels on a three-year cycle, beginning on January 1, 2020.

While the FLSA overtime pay requirement affects classified school employees who work over 40 hours per week, school employers should note that it does not apply to certificated employees under a specific "teaching professional" exemption in the FLSA regulations. (29 C.F.R. § 541.303.) School employers should also be mindful that California law entitles classified school employees to an overtime pay rate after working eight hours in one day (unless a statutorily-allowed alternative schedule is approved).

Before the final rule takes effect, public agencies should evaluate their employment rosters prior to determine whether currently exempt employees will continue to qualify for an exempt status under the higher salary levels contained in the new regulations. If currently exempt employees do not meet the new minimum salary level, the employer must either: 1) begin paying the employee for the overtime he or she works, or 2) increase the employee's salary so that he or she will meet the new minimum salary level and continue to be exempt from overtime pay. Thus, the new regulations will likely result in

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June 2016
Number 39

increased costs for the employer.

If you have questions about the new overtime regulations or any other employee compensation issues, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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