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## **Salary Minimum for Overtime Exemption to More than Double in December 2016**

Last week, the Department of Labor (“DOL”) released a final rule that will more than double the minimum salary necessary for employees to qualify for an exemption to overtime pay requirements under the Fair Labor Standards Act (“FLSA”). The final rule, which takes effect December 1, 2016, is expected to make over 4 million workers not currently eligible for overtime newly subject to the FLSA’s overtime pay and recordkeeping requirements.

Under the final rule, the minimum salary necessary for employees to qualify for the “white collar” exemptions to the FLSA’s overtime pay requirements will be \$913 per week (\$47,476 annually), up from the current threshold of \$455 per week (\$23,660 annually). Employers will be permitted to count non-discretionary bonuses, incentive payments, and commissions toward up to 10% of the minimum salary threshold, provided that these payments are made on a quarterly or more frequent basis.

The final rule will also increase the compensation threshold necessary to classify an employee as an exempt “highly compensated employee” from \$100,000 to \$130,004. The salary thresholds under both the “white collar” and “highly compensated employee” exemptions will automatically update every three years, beginning January 1, 2020, with increases tied to wage data published by the Bureau of Labor Statistics.

Significantly, the duties tests used to determine whether the professional, executive, or administrative exemptions apply are not affected by the final rule.

The final rule provides employers with less than seven months to review their current operational practices and to adapt to the DOL’s new regulatory framework. Employers should determine which employees will be affected by the increased salary level requirements and evaluate how increases in overtime costs (or employee salaries) will affect their operations. Employers should also prepare employees for any changes to timekeeping, compensation, staffing, and related practices that may

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be necessary to comply with the final rule. The pending changes to the salary level thresholds also provide employers with an ideal opportunity to reexamine their current classification of employees and correct any potential misclassifications.

If you have any questions or would like detailed information about the final rule, please contact Nick Bauer at (212) 758-7793 or any other attorney at the Firm.

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