New Overtime Rules

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The Fair Labor Standards Act

The FLSA requires employers to pay overtime to all employees, <u>unless exempt from the FLSA</u>:

- Administrative Employee
- Executive Employee
- Professional Employee
- Computer Professional
- Outside Sales Employee
- "Highly Compensated Employees"

Two tests for determining applicability of Exemption:

- 1. Duties; and
- 2. Salary Basis

(not in the case of *Teacher* and "*Academic Administration*" exemptions, which are driven by duties only—*so no salary basis*)

The Duties Test

Executive Exemption

- Primary duty must be managing the enterprise or department.
- Regularly directing the work of at least two other full-time employees.
- Authority or strong input on hire/fire, promotions, demotions, etc.

Administrative Exemption

- Office or non-manual work directly related to management or general business operations of the employer.
- Primary duty includes exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

- Learned Professional: Primary duty includes work that requires knowledge of an advanced type in a field of science and learning customarily acquired by a prolonged course of specialized intellectual instruction.
- *Creative Professional*: Primary duty includes work that involves invention, imagination, originality or talent in a recognized field of artistic or creative endeavor ("*Creative Professional*").

Teachers

• Primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment.

• The salary and salary basis requirements **do not** apply to teachers.

Education Administration Employees

- Compensated on a salary basis that is **at least equal to the entrance salary for teachers** in the school.
- Primary duty performing administrative functions directly related to academic instruction or training in a school.

• Examples:

- * superintendent and any assistants responsible for administrative matters such as curriculum, methods of instruction, measure and testing of students;
- × principals, vice-principals, department heads, academic counselors.

The Salary Basis Test

Employee must be paid on a salary basis

• Current Salary Level: \$455/week (\$23,660 annual)

• *Final Rule*: \$913/week (\$47,467 annual)

The Final Rule

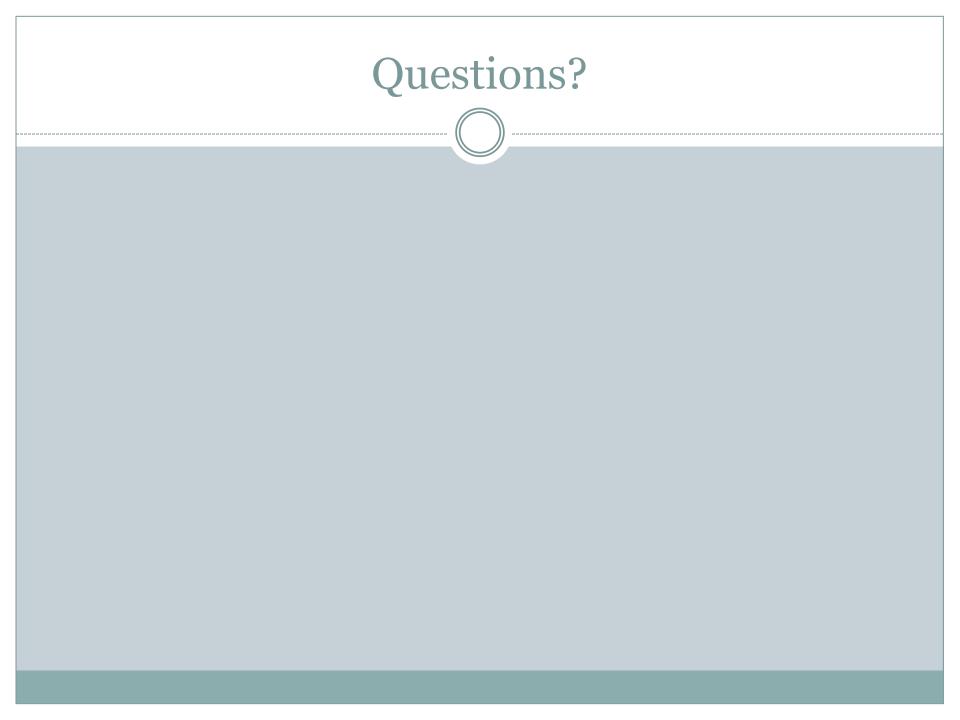
- Goes into effect on December 1, 2016.
- Does not impact the Duties Test.
- More than doubles the **standard salary level** required for an employee to satisfy the White Collar exemptions.
 - Salary level increases from \$455/week (\$23,660 annual) to \$913/week (\$47,467 annual): tied to 40th percentile of earnings of full-time salaried workers in lowest income Census region.

The Final Rule

- Permits employers to use nondiscretionary bonuses and incentive payments to satisfy up to 10% of the standard salary level.
- Increases total annual compensation for "Highly Compensated Employees" from \$100,000 to \$134,004: tied to 90th percentile of full-time salaried workers nationally.
- Includes mechanism for automatically adjusting every 3 years to maintain levels at above percentiles.

Compliance

- Primary Inquiry does the employee regularly work more than 40 hours in a week?
- If so, consider:
 - Increasing salary to new salary level
 - Maintaining current salary but paying overtime when due (must track hours)
 - Adjusting schedules to reduce overtime and requiring advanced authorization for overtime



Thank you!

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