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DOL Overtime Rule Update

By: Justin Harkins

The United States Department of Labor (“DOL”) released its long-awaited Final Rule updating the exemption threshold under the Fair Labor Standards Act on September 24, 2019. The DOL’s Wage and Hour Division (“WHD”) increased the salary level for exempt executive, administrative, and professional employees from \$455 per week to \$684 per week, or \$35,568 per year. This means that for these categories of employees to be exempt from receiving overtime pay, they must earn at least this new amount, paid in the form of salary.

The WHD also increased the total annual compensation level for “highly compensated employees” from \$100,000 to \$107,432. This means that these employees, even if they do not qualify as executive, administrative or professional employees, are eligible for overtime-exempt status if they meet a reduced-duties test: (1) The primary duty must be office or non-manual work, and (2) they must “customarily and regularly perform at least one of the exempt duties of an executive, administrative or professional employee.”

These new levels are likely to go into effect on January 1, 2020. The DOL expects that approximately 1.3 million American workers will become eligible for overtime pay with these new thresholds.

The new Rule also will permit employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the aforementioned salary levels, as long as those bonuses and/or incentive payments are paid at least annually. This is the first time the DOL has allowed those payments to be considered in the salary levels.

The new Final Rule will not change any of the legal duty tests regarding any category of employee and does not include any provision that would automatically increase any of the above levels at some regular interval or fixed date.

Crowley Fleck PLLP’s next Employment Practice Group Newsletter will contain a longer article about the new overtime Final Rule and its potential implications for employers. Until then, Crowley Fleck has several attorneys who are ready and able to answer questions you may have about this new Final Rule.

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