

U.S. DOL ANNOUNCES THAT IT WILL PUBLISH FINAL RULE TO UPDATE OVERTIME REGULATIONS

Today, the U.S. Department of Labor announced that it will publish on May 23, 2016 its Final Rule to update the federal regulations defining the overtime exemption for executive, administrative, and professional employees or otherwise known as "white-collar" employees. The pre-publication version of the Final Rule is, however, available now. The final rule will become effective December 1, 2016.

The Final Rule focuses primarily on updating the salary level requirement for white-collar employees, increasing the salary level requirement from \$455 per week (\$23,660 annually) to \$913 per week or \$47,476 annually for a full-year employee. The Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level. The Final Rule also sets the total annual compensation requirement for highly compensated employees (HCE) subject to minimal duties test to \$134,004 up from the current \$100,000 salary threshold.

The initial increases to the standard salary level from \$455 to \$913 per week and HCE total annual compensation requirement (from \$100,000 to \$134,004 per year) will be effective on December 1, 2016. Future automatic updates to those salary level thresholds will be automatically updated every three years beginning on January 1, 2020.

Currently, for an employee to be exempt from the minimum wage and overtime requirements under the Fair Labor Standards Act (FLSA), an employee must be paid on a salary basis meaning that the employee must receive a predetermined amount of at least \$455 per week which cannot be subject to a reduction because of variations in the quality or quantity of the work performed. In addition, the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations ("duties test").

The Final Rule is not changing any of the existing job duty requirements for employees to qualify for the white collar overtime exemption. The Final Rule is also not changing the HCE duties test. The DOL expects that the standard salary level set in the Final Rule and automatic updating will work effectively with the duties test to distinguish between overtime-

eligible workers and those who may be exempt.

The effect of the increase in the salary level test from \$455 per week to \$913 per week will result in certain employees who are now considered exempt under the current regulations to lose their overtime exemption effective December 1, 2016 unless their employers increase their salary level to the new salary level requirement. The DOL estimates that the change in the salary level requirement will permit approximately 4.2 million more employees who are not currently eligible for overtime under the FLSA to be entitled to overtime once the Final Rule becomes effective on December 1, 2016.

O'Neil Cannon will be hosting a seminar on June 8, 2016 at the Country Springs Hotel in Pewaukee, Wisconsin providing important information and insight for employers on the new overtime rules. Please visit our firm website for more information.