

## **HOW WILL THE NEW OVERTIME LAW AFFECT YOU?**

Effective December 1, 2016, the Department of Labor's (DOL) final rule updating the Fair Labor Standard Act ("FLSA") increases the salary threshold above which workers may be exempt from overtime pay requirements from the current salary level of \$455 to \$913 per week and annual salary to \$47,476. If a worker earns less than the new threshold, they are eligible for overtime compensation for work more than 40 hours per week. The highly-compensated employee threshold will also climb to an annual compensation requirement of \$134,000 in order to be exempt.

### **Who is Exempt?**

Under the new regulation, to be exempt three criteria must be satisfied:

1. Employee must be paid on a salary basis not subject to reduction based on quality or quantity of work ("salary basis test");
2. Their salary must meet a minimum salary level of \$913 per week, which is the equivalent of \$47,476 per year ("salary level test"); and
3. The employee's primary job duties must involve those associated with exempt executive, administrative, or professional employees ("duties test" which has not been changed).

Employers will be able to include nondiscretionary bonuses and incentive payments, including commissions, to satisfy up to 10 percent of the standard salary level. To use nondiscretionary bonuses and incentive payments towards a portion of the standard salary test, such payments must be paid on a quarterly or more frequent basis. In addition, under the new rule the salary thresholds will be automatically adjusted every three years.

### **Employers' Options**

Employers should begin to evaluate the impact of the DOL's new regulation and consider options to comply with the law as necessary.

1. Evaluate job classifications and whether the employees are performing exempt duties. If they meet the three criteria, no changes to pay or hours is necessary.
2. If employees meet the duties test and the salary basis test, but do not meet the salary level test, raise the salaries for employees who are close to the new salary level and regularly work overtime.
3. Reduce or eliminate overtime hours.
4. Re-classify jobs to non-exempt that do not meet the salary threshold, and pay overtime.

The new rule is only briefly summarized here and employers should check with their E&U attorney for more information about conducting an audit of job classifications, implementing changes if necessary, communications to employees, and training of managers and employees on recording time worked and work "after hours."

