



**CLIENT ALERT
(MAY 19, 2016)**

REVISED OVERTIME REGULATIONS *FINALLY* PUBLISHED

This week, the United States Department of Labor (“DOL”) published the final, revised regulations relating to overtime pay under the federal Fair Labor Standards Act (“FLSA”). **The regulations become effective December 1, 2016.** It is important for employers to carefully review these final regulations and plan for any required changes that may need to be made by December 1, 2016, especially since these final regulations differ from the DOL’s prior draft regulations. The key provisions of the final regulations include:

• **Salary Threshold Changes**

- The minimum salary threshold that must be met in order to properly characterize an employee as exempt under the “white collar exemptions” (e.g., administrative, executive, professional, computer professional) will be **\$913 per week**, which annualizes to **\$47,476**. This minimum threshold is actually less than what was published in the draft regulations (\$970 per week, annualized to \$50,440), but more than *double* the current threshold of \$455 per week (\$23,660 a year).
- The minimum salary threshold for the “highly compensated employee” exemption will increase to \$134,004 per year.
- Although the draft regulations proposed that the above salary thresholds increase annually, the final regulations provide that these thresholds will be in effect through December 31, 2019. Then, on **January 1, 2020 and every three years thereafter**, the Department of Labor will set new salary thresholds based upon formulas which use the compensation levels for similar employees as published by the Bureau of Labor Statistics.

• **Nondiscretionary Bonuses and Incentive Payments**

- The final regulations also include a new concept that was not in the prior draft regulations. Specifically, employers will be able to use the payment of nondiscretionary bonuses and incentive payments (such as commissions) made to the employee (on at least a quarterly basis) to satisfy up to 10% of the white collar salary threshold above. However, important points to keep in mind are: that translates to only \$4,747 per year in bonuses and incentive payments which can be used to satisfy the salary threshold, and the bonuses or incentive payments must be *nondiscretionary*, meaning there is a right or entitlement to the compensation. For example, year-end discretionary bonuses would not count toward the salary threshold.

If you have exempt employees who do not meet the new salary thresholds, you will need to make changes before December 1, 2016. Changes to consider in order to achieve compliance may include: converting employees to non-exempt (and paying overtime pay); increasing salary levels to the required threshold; and/or restructuring compensation packages. Keep in mind that the other provisions of the FLSA regulations, including the duties test for the white collar exemptions, remain unchanged.

All employers should begin planning and budgeting for these changes, including conducting an audit of all positions, updating job descriptions and exempt status classifications, potentially preparing restructured compensation programs, and preparing the messaging to employees regarding upcoming compensation and/or exempt status changes.