



### **White Collar Workers Get a Raise: Courtesy of the U.S. Department of Labor**

Syracuse, New York

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In May 2016, the United States Department of Labor ("DOL") issued its highly anticipated final rule for defining and delimiting the exemptions for executive, administrative, outside sales and computer employees, otherwise known as the "White Collar Exemptions" (the "Final Rule"). The Final Rule was designed to update the standard salary level that employers must pay their white collar workers in order to continue their treatment as "exempt" from the overtime rules. This alert will highlight the most significant changes mandated by the Final Rule and suggest some options for responding to the changes in the law.

First, a review of the basic considerations for applying the White Collar Exemptions is necessary for understanding the changes mandated by the Final Rule. On the most basic level, the Fair Labor Standards Act (and similar NYS regulations) permit employers to treat certain "white collar" employees as exempt from overtime, if certain conditions are met. Plainly stated, those conditions are as follows:

1. the employee must be paid on a salary basis, not subject to reduction based on quality or quantity of work rather than, for example, on an hourly basis (the "Salary Basis Test");
2. the employee's salary must meet a minimum salary level, which prior to the enactment of the Final Rule was \$455 per week (\$675 per week under New York law) (the "Salary Level Test"); and
3. the employee's primary job duties must involve the kind of work associated with exempt executive, administrative or professional employees (the "Standard Duties Test"). The Standard Duties Test has very specific requirements which are detailed in the regulations.

The primary impact of the Final Rule is to increase the salary an employee must earn to satisfy the Salary Level Test under federal law. The new minimum salary is \$913 per week, or the equivalent of \$47,476 per year.

The new minimum salary level, moreover, will fluctuate over time. The Final Rule sets forth a formula in which the minimum salary must equate to the 40<sup>th</sup> percentile of earnings of full-time salaried workers from the lowest wage Census Region determined by the DOL. The minimum salary required for exempt status will be re-adjusted every three (3) years, with the first update to take place in 2020.

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The Final Rule also raises the compensation level for Highly Compensated Employees who are subject to a less stringent duty test. Under the prior rule, employees earning a salary of \$100,000 per year were exempt from the Standard Duties Test given their higher level of compensation. The final rule increases the minimum salary required to qualify as a Highly Compensated Employee from \$100,000 to \$134,000 annually.

The Final Rule takes effect on **December 1, 2016**.

The increase in salary mandated by the Final Rule is estimated to directly impact the earnings of more than 5 million employees in the United States. Many employers will struggle to comply with the Final Rule, given that it effectively doubles the existing minimum salary required under federal rules, and represents 35% over the minimum salary required under New York regulations.

Employers do have options. Other than simply complying with the Rule, there are several strategic choices that employers may legitimately make to minimize the impact on their businesses. Among others, these options include: (i) treating the employees as salaried non-exempt and limiting the payment of overtime; (ii) reorganizing workloads and adjusting work schedules; and (iii) adjusting wage rates through contractual agreements with employees to limit overall compensation. These methods should be constructed carefully with the advice of counsel to ensure compliance with the Fair Labor Standards Act and New York law.

## Bousquet Holstein Employment and Labor Practice

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