

**Department of Labor Publishes Final Rule Affecting Overtime Exemptions**  
**Under the Fair Labor Standards Act**

By: Josh C. Hausman, Esquire

On September 24, 2019, the Department of Labor published a final rule which, when it becomes effective on January 1, 2020, will increase the salary threshold necessary for an employee to be considered exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act (“FLSA”). Beginning next year, employees earning less than \$35,568 per year, or \$684 per week, will become entitled to overtime pay. The Department of Labor estimates that 1.2 million employees who are currently exempt will gain overtime eligibility under the new rule.

Section 13(a)(1) of the FLSA exempts from its statutory minimum wage and overtime provisions those employees “employed in a bona fide executive, administrative, or professional capacity.” Past regulations promulgated by the Department of Labor have defined the scope of this “white collar” exemption by establishing three (3) tests—the “salary basis test,” the “salary level test,” and the “duties test”—all of which must be met for an employee to qualify for the exemption. The salary level test has remained fixed at \$23,660 per year, or \$455 per week, since 2004. In 2016, an attempt by the Department of Labor under the Obama administration to increase the salary threshold to \$47,476 per year, or \$913 per week—a change which would have resulted in an estimated 4.2 million employees becoming non-exempt—was enjoined in federal district court.

The new rule increases the salary threshold by a more modest amount than the Department of Labor’s 2016 effort: to meet the new salary level test, employees must earn at least \$35,568 per year, or \$684 per week. Effective January 1, 2020, employees earning less than this amount in salary will no longer qualify for the white collar exemption. Accordingly, these employees will become entitled to overtime at the rate of one and one-half (1 ½) their regular rate of pay for all hours worked over forty (40) hours in a workweek.

Employers should immediately commence a review of their workforces to determine which of their employees will become entitled to overtime early next year. Importantly, employers should be aware that an employee who earns more than the new salary threshold will still be required to satisfy the applicable duties test in order to qualify for the white collar exemption. Further, the Department’s new rule allows employers to consider nondiscretionary bonuses and incentive payments (including commissions) which are paid at least annually in order to satisfy up to ten percent (10%) of the new salary threshold. Additionally, while unlikely to apply to public employers in Pennsylvania, the new regulations also raise salary level necessary to qualify for the “highly-compensated” employee exemption. Campbell Durrant attorneys stand ready to assist employers in all aspects of the FLSA, including determining employee exempt status under the new regulatory requirements.