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Client Alert

FROM: Sarah I. Hale
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RE: New Salary Basis Test Takes Effect December 1, 2016

Nearly a year after the U.S. Department of Labor proposed changes to regulations under the Fair Labor Standards Act governing overtime exemptions for executive, administrative and professional employees (commonly known as the “white collar exemptions”), it has released its long-awaited Final Rule. If not successfully challenged, the new standards take effect December 1, 2016. [The text of the Final Rule and DOL guidance is available here.](#)

The Department of Labor predicts that 4.3 million workers will be overtime eligible as a result of the new rules. The Final Rules makes the following changes:

- 1. Salary threshold for “white collar exemptions” will increase from \$23,660 (\$455 per week) to \$47,476 (\$913 per week).**

The Department of Labor announced a new salary threshold level of \$47,476, more than double the current salary level, but lower than the salary level DOL originally proposed in July 2015 (\$50,440).

- 2. Salary threshold for highly compensated employees increases to \$134,004.**

The Final Rule also increases the salary threshold for Highly Compensated Employees (“HCE”) setting the total compensation level for HCEs at \$134,004 annually – up from the current \$100,000.

- 3. Salary levels will automatically increase every three years.**

The Final Rule provides for automatic increases in the salary levels every three years (beginning January 1, 2020) – with the minimum salary level indexed to the 40th percentile of salaries for full-time workers in the lowest wage census region (currently the south region), and the HCE level indexed to the 90th percentile of salaries for national full-time salary workers.

- 4. Non-discretionary bonuses can be included in salary levels.**

Employers are now allowed to count nondiscretionary bonuses and other incentive payments, including commissions, for meeting the salary threshold. Under the Final Rule

there are limits to the use of such payments to meet the salary threshold, as only ten percent of the salary level can be paid in the form of this incentive pay and it must be paid quarterly.

What the Final Rule Does Not Do:

- Makes no other changes to the Salary Test for White Collar Exemptions;
- Makes no changes to the Duties Test for White Collar Exemptions.

The Final Rule will not become effective until **December 1, 2016**. This means that employers have almost 200 days to prepare for and implement any changes resulting from, and that comply with, the new regulations. Additionally, there are potential challenges as Congress has 60 session days to review the Final Rule. Even before it was announced, however, Congress had already begun considering legislation to roll the changes back. Certainly, the President will veto any such vote. Summit will update you on any successful challenge to the Final Rule.

For more information, please contact Summit attorneys Sarah Hale (sarahh@summitlaw.com or 206-676-7022) or Beth Kennar (bethk@summitlaw.com or 206-235-7068 (who is available June 1st). Sarah and Beth can guide you through various alternatives steps you can take to comply with the Final Rule.