

Employment Corner
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Change In Overtime Exemption Rule Still In Flux

From almost the inception of the Fair Labor Standards Act (“FLSA”), certain categories of employees have been exempt from payment of overtime. The primary overtime exemptions under the FLSA include the executive, administrative and professional exemptions, (e.g. manager, supervisor). Determining whether an employee is exempt depends on the employee’s job duties, salary level, and, for the professional exemption, the employee’s education.

In 2016, the Obama Department of Labor (“DOL”) issued a “Final Rule” increasing the threshold salary level for exempt employees under the FLSA from \$23,600 (\$455 a week), to \$47,476 (\$913 per week). This was certainly a big jump. All of a sudden, a lot of “supervisors/managers” would no longer be exempt from overtime and would be entitled to overtime pay. With the 2016 change in the Administration, however, the “Final Rule” was final no more. In late 2016, the “Final Rule” was put on hold. The Trump Administration’s DOL has been receiving public comments on changing the “Final Rule”, and will likely reduce the \$47,476 threshold salary level that was put on hold. Currently, the DOL is holding a series of “Listening Sessions” country-wide for interested parties. In the end, that threshold salary level will likely end up somewhere in the middle, say the low \$30’s, but who knows. In the meantime, the DOL has said it will stick with the lower amount (\$455 per week), for the time being.

What’s this mean for you as practitioners? Regardless whether you represent business owners, employees, or both, or are considering the matter for your own law firm, it’s important to familiarize yourself with the DOL overtime rules. Improperly classifying an employee, or group of employees, as exempt from overtime when they are not can mean payment of backpay (overtime due) for the past two years (three, if a willful violation). If an employee files suit for the overtime, attorney fees can also be awarded if the employee prevails.

If you’re interested in learning more about the DOL overtime rules you can go to dol.gov/whd/overtime/regulations.