

# NEW HIGHER “WHITE COLLAR” FEDERAL EXEMPTION SALARY THRESHOLD – BUT CALIFORNIA THRESHOLD REMAINS HIGHER!

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Effective January 1, 2020, the minimum salary threshold to qualify as exempt from overtime under the executive, administrative and professional exemptions of the Fair Labor Standards Act (“FLSA”), often referred to as the “White Collar” exemptions, will increase from \$23,600.00 to \$35,568.00 annually and from \$455.00 to \$684.00 weekly. No changes to the duties tests were made.

However, California employers should note that the state minimum wage governs the exempt employee threshold salary in California, which is higher than the increased federal threshold. In 2019, the minimum salary for employees exempt from overtime is \$49,920.00 annually for employers with at least 26 employees, and \$45,760.00 annually for employers with fewer than 26 employees. But, on January 1, 2020, with the increase in the state minimum wage to \$13.00 per hour for employers with at least 26 employees and \$12.00 for employers with fewer than 26 employees, the minimum salary for California employees under the executive, administrative and professional overtime exemptions will increase to \$54,080.00 annually for employers with at least 26 employees, and to \$49,920.00 annually for employers with fewer than 26 employees.

The increases issued by the U.S. Department of Labor on September 24, 2019 are expected to result in 1.3 million currently exempt employees in the nation becoming eligible for overtime pay, unless their employers intervene by raising affected workers’ salaries. Although significant, these increases are much lower than those issued on May 18, 2016 under the Obama administration, which never became effective after a federal district court in Texas blocked the rules.

Under the new federal rule, employers may use nondiscretionary bonuses and incentive payments, including commissions paid at least annually, to satisfy up to 10% of the weekly salary threshold. If at the end of a 52-week period, an employee hasn’t received bonuses or incentives, such as commissions equal

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to 10% of the threshold level for the 52-week period, the employer is permitted to make a payment within one pay period after the end of the 52-week period to make up the deficit. Any such catch-up payment will count only toward the previous 52-week period’s salary amount and not toward the salary amount in the 52-week period in which it was paid. Employers should be sure not to exceed the 10% maximum allowance, or misclassification claims may result. Another consideration is to ensure that only nondiscretionary bonuses, rather than discretionary bonuses, are included in the 10% calculation.

The new federal rule also increases the salary level required to qualify for the highly compensated employee exemption from \$100,000.00 to \$107,432.00. At least \$35,568.00 of the annual \$107,432.00 must be paid on a salary or fee basis, without regard to nondiscretionary bonus and incentive payments. Employees classified as exempt under the highly compensated exemption must perform office or non-manual work, and regularly perform at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee. This represents a less stringent standard than is used for non-highly compensated white-collar workers, who must meet all the duties and responsibilities of the test. The new rule also provides a special salary rule for the motion picture industry of a base rate of \$1,043.00 per week.

As a result of the increased California salary threshold for exempt status, before January 1, 2020, employers will need to identify affected employees, assess whether their current salaries meet the new threshold, and determine whether to increase the salary of those that do not or convert these employees to non-exempt status, making them eligible for overtime pay. The inquiry would consider the hours worked by each affected employee and whether reclassification would result in additional costs compared to raising the salary to meet the threshold. If reclassified, employees should be informed of timekeeping and meal and rest break requirements, and any other policies relevant to the employer’s other non-exempt employees. Employers may wish to consider methods of controlling overtime, and review policies and procedures to ensure compliance with overtime laws. It would also be prudent to take the opportunity to review all exempt employee classifications to eliminate possible costly misclassifications. Employers should keep in mind that any salary changes needed to maintain exempt status must be made for the workweek that includes January 1, 2020, which is a Wednesday.

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