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Part 541 Salary Level Increases to $684/Week

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Seyfarth Synopsis: *The U.S. Department of Labor announced its* final rule *updating and revising the regulations issued under the Fair Labor Standards Act (FLSA) regarding the earnings thresholds necessary to exempt executive, administrative or professional employees from the FLSA's minimum wage and overtime pay requirements. The Department simultaneously announced its formal rescission of the 2016 final rule.*

The final rule updates the salary and compensation levels needed for workers to be exempt:

- The standard salary level has been increased from the currently-enforced level of $455 to $684 per week (equivalent to $35,568 per year for a full-year worker). The Department is updating the standard salary level set in 2004 by applying to current data the same method used to set that level in 2004—i.e., by looking at the 20th percentile of earnings of full-time salaried workers in the lowest-wage census region (then and now the South), and/or in the retail sector nationwide.

- The total annual compensation level required for highly compensated employees has been increased from the currently-enforced level of $100,000 to $107,432 per year. This compensation level equals the earnings of the 80th percentile of full-time salaried workers nationally.

- Employers are permitted to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10 percent of the standard salary level. If an employee does not earn enough in nondiscretionary bonus or incentive payments in a given year (52-week period) to retain his or her exempt status, the Department permits the employer to make a "catch-up" payment within one pay period of the end of the 52-week period.

The effective date for the changes is January 1, 2020. The Department rejected calls to automatically update the salary levels, instead expressing its intention to update the standard salary and highly compensate employee total annual compensation levels more regularly in the future through notice-and-comment rulemaking.

In addition, the final rule updates the special salary levels for employees in Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands ($455 per week), as well as the special base rate for employees in the motion picture producing industry ($1,043 per week).

The final rule does not:

- change the regulatory text for primary duty;

- revise the tests for the duties required of executive, administrative, or professional employees;

- amend the salary basis test;

- apply any new compensation standards to doctors, lawyers, teachers, or outside sales employees; or

- make any changes to the computer employee exemption (other than the salary increase, as may be applicable).

Employers will need to meet the new levels by the effective date and should begin making preparations to do so. In the meantime, various groups–including workers' advocates and others purporting to represent public interests –previously have threatened to pursue litigation to enjoin the final rule from going into effect. We will keep you updated of further developments.

If you would like further information, please contact Alexander J. Passantino at apassantino@seyfarth.com.

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