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EMPLOYMENT LAW ALERT

**NEW COMPENSATION THRESHOLDS IN  
FLSA'S WHITE COLLAR EXEMPTIONS**

June 3, 2016

**Employment Law Alert:**  
**New Compensation Thresholds in FLSA's White Collar Exemptions**

***Executive Summary***

The Fair Labor Standards Act requires employers to pay employees overtime for hours worked over 40 in a workweek, unless they meet an exemption. On December 1, 2016, the salary threshold for the "white collar" exemptions will more than double, from \$455 per week to \$913 per week. And the compensation threshold for the "highly compensated employee" exemption will increase from \$100,000 per year to \$134,004 per year. In light of these increases, employers should audit their workforces to ensure that they are not currently misclassifying employees, and will not be misclassifying them after December 1.

***Increased Compensation Thresholds for White Collar Exemptions***

The Fair Labor Standards Act requires employers to pay employees an overtime premium for hours worked over 40 in a workweek, unless they meet an exemption. The most common are the "white collar" exemptions, specifically the executive exemption, the administrative exemption, and the professional exemption.

Each of these exemptions has two components, known as the "salary" test and the "duties" test.<sup>1</sup> The "salary" test requires the employee to be paid a salary of at least \$455 per week (approximately \$23,660 per year). On December 1, 2016, this threshold increases to \$913 per week (approximately \$47,476 per year). Up to 10% of this threshold may be met by non-discretionary bonuses, incentive pay, or commissions, so long as they are made on at least a quarterly basis.

There is also a "highly compensated employee" exemption. To qualify for this exemption, an office worker must regularly perform an exempt duty of an exempt executive, administrative, or professional employee, and earn at least \$100,000 per year. On December 1, 2016, this compensation threshold increases to \$134,004 per year.

Under the new rule, the compensation thresholds under these exemptions automatically update every three years. They will be based on the U.S. Census's

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<sup>1</sup> The "duties" test was not affected by the DOL's new rule.

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40th and 90th percentiles of weekly earnings for full-time salaried workers in the lowest-wage Census region, currently the South.

***What does this mean for Texas employers?***

Recently, wage-and-hour litigation has been the fastest growing segment of employment litigation. More and more companies are being caught off guard by DOL investigations and collective-action lawsuits. Oftentimes, the source of the employer's woes is the misperception that a salaried employee was exempt, when in fact he or she did not meet the "salary" test or the "duties" test (or both).

Prevention is the key. Before an agency investigation or lawsuit, Texas employers should audit their workforce—with the assistance of counsel—to confirm that their current employees are properly classified. Looking ahead to December 1, 2016, Texas employers should also be ready to restructure (or increase) affected employees' pay.

The Labor and Employment lawyers at Roberts Markel Weinberg Butler Hailey PC would be happy to discuss with you how to be ready for when the new overtime rules take effect.

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