

## **THE DOL UNVEILS SIGNIFICANT REVISIONS TO FEDERAL OVERTIME LAWS, INCREASING SALARY THRESHOLD TO \$35,568**

*By: Brent R. Scott, Associate, Workplace Law Practice*

On September 24, 2019, the U.S. Department of Labor's (DOL) Wage and Hour Division unveiled significant revisions to federal overtime laws. To be exempt from overtime requirements under the Fair Labor Standards Act (FLSA), employees must be paid a salary of at least the "threshold amount" and meet certain "primary duty" tests. If the employee is paid less than the minimum salary requirement or does not meet the "primary duty" test, the employee will be classified as "nonexempt" and entitled to an overtime premium for all hours worked beyond forty (40) hours in a workweek.

Up until now, the minimum salary level for exemption of overtime pay was set at \$455 a week (\$23,660 annualized). However, the DOL has finalized sweeping changes to the regulation. Under the new regulation:

- The annual salary threshold workers need to exceed to qualify for the FLSA's "white-collar" exemptions was increased from \$455 per week to \$684 per week. Consequently, employees who make less than \$35,568 are now eligible for overtime pay.
- The salary requirement for "Highly Compensated Employees" was increased from \$100,000 to \$107,432 per year.
- In addition to modifying the salary amount for exempt employees and the total annual compensation

requirement for highly compensated employees, the rule also permits employers to apply non-discretionary bonus and other incentive payments to satisfy up to 10% of the standard salary level, provided such non-discretionary payments are paid at least annually or more frequently. This means that employers can bump-up an employee's earned salary with a bonus to meet the minimum salary standard.

As a result of these modifications, experts believe that overtime pay obligations will be expanded to an estimated 1.3 million additional workers.

The new rule takes effect on January 1, 2020. Employers should evaluate their exempt employees' salaries to ensure compliance with the new threshold requirements. If an exempt employee is paid less than the new minimums, he or she must either receive a salary increase to meet the thresholds or must be reclassified as a non-exempt employee and entitled to overtime pay. Employers should also periodically audit their classifications to ensure that exempt employees meet the duties test.

If you have any questions about the new salary threshold rule, exemptions under the FLSA, or any other wage and hour matter, please contact any member of Bodman's Workplace Law group for guidance.



#### ABOUT THE AUTHOR

#### **BRENT R. SCOTT**

*Brent R. Scott concentrates his practice on advising and representing companies in all aspects of employment, labor, and general business law matters across multiple industries.*

## WORKPLACE LAW PRACTICE GROUP

<b>AARON D. GRAVES</b>   <i>Chair</i> 313.392.1075 agraves@bodmanlaw.com	<b>JOHN T. BELOW</b> 248-743-6035 jbelow@bodmanlaw.com	<b>JOHN C. CASHEN</b> 248.743.6077 jcashen@bodmanlaw.com
<b>GARY S. FEALK</b> 248-743-6060 gfealk@bodmanlaw.com	<b>STEVEN J. FISHMAN</b> 248.743.6070 sfishman@bodmanlaw.com	<b>JOHN DAVID GARDINER</b> 616.205.3123 jgardiner@bodmanlaw.com
<b>DONALD H. SCHARG</b> 248.743.6024 dscharg@bodmanlaw.com	<b>BRENT R. SCOTT</b> 616.205.3317 bscott@bodmanlaw.com	<b>REBECCA C. SEGUIN-SKRABUCHA</b> 313.393.7594 rseguin-skrabucha@bodmanlaw.com
<b>MELISSA M. TETREAU</b> 248.743.6078 mtetreau@bodmanlaw.com	<b>DAVID B. WALTERS</b> 248.743.6052 dwalters@bodmanlaw.com	<b>KAREN L. PIPER</b>   <i>Of Counsel</i> 248.743.6025 kpiiper@bodmanlaw.com