

## DEPARTMENT OF LABOR ALERT

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### Department of Labor Issues Final Rule Expanding Overtime Pay

By ***Nathan Pangrace***, Associate

The Department of Labor (DOL) has issued a final rule expanding the number of Americans that qualify for overtime pay under the Fair Labor Standards Act (FLSA). The new rule, issued on **May 18, 2016**, will more than double the annual salary threshold that determines whether an employee qualifies for overtime. Salaried employees earning less than \$47,476 will be eligible for time-and-a-half overtime pay when they work more than 40 hours per week. This threshold will automatically update every three years by indexing it to salary growth in the lowest income region of the country. The rule also, for the first time, allows bonuses and other incentive payments to count up to 10% of the new salary threshold.

The change was necessary, the DOL argued, because inflation has eroded the current threshold of \$23,660 per year, last updated in 2004. Today, only 7% of employees qualify for overtime pay based on their salaries, down from 60% in 1975. The DOL expects that 4.2 million employees will be newly eligible for overtime pay, and the rule will boost wages for employees by \$12 billion over the next 10 years. Employees in the retail and restaurant industries are likely to be the most heavily affected.

Proponents of the new rule, including President Obama, argue it will help strengthen and secure the middle class by raising Americans' wages. Critics, including employers and industry groups, counter that the rule will force them to reduce employees' hours, slow the hiring of new employees, and reduce bonuses and benefits.

Notably, it does not change the duties test for the FLSA's "white collar" exemptions for administrative, executive, professional, outside sales employees, and computer-related occupations.

This rule goes into effect on **December 1, 2016**. Employers should begin auditing their workforces now to determine which employees may be affected and how to respond to this change. For additional information and assistance in complying with the DOL's new overtime rule, please contact one of the listed Roetzel attorneys.

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