

USDOL Issues Final Regulations to Increase the Salary Level to Qualify for the White Collar Exemptions

On September 27, 2019, the U.S. Department of Labor published its [final regulations](#) in the Federal Register to increase the minimum weekly salary to qualify for the Fair Labor Standards Act white collar exemptions from \$455 per week (\$23,660 per year) to \$684 per week (\$35,568 per year). These new regulations become effective on January 1, 2020.

The USDOL used the same methodology to come up with the \$684 weekly salary level that it used in its regulations that were proposed on [March 7, 2019](#), and that it used when the weekly salary level was last increased to \$455 in 2004. The USDOL set it at the 20th percentile of earnings of full-time salaried workers in the lowest-wage census region (the South) and in the retail sector. The final regulations will allow employers to count non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the minimum salary level, provided that the bonuses or incentive payments are paid at least annually.

The USDOL's final regulations also increase the annual salary threshold for the highly compensated employee exemption from \$100,000 to \$107,432, which is the 80th percentile of earnings of full-time salaried workers nationally. To qualify for the highly compensated employee exemption, an employee must meet the annual salary threshold and must satisfy at least one element of the executive, administrative, or professional exemption. This increase in the salary threshold for the highly compensated employee exemption is less than what was initially proposed by the USDOL. In March, the USDOL proposed to raise the highly compensated employee salary threshold to \$147,414, which is the 90th percentile of earnings of full-time salaried workers nationally.

The final regulations do not include any changes to the duties requirements for any of the white collar exemptions.

New York's minimum salary level to qualify for the executive and administrative exemptions is currently [higher than the \\$684 per week in all regions](#). However, New York does not set a minimum salary level for the professional exemption, so employers will need to review the salary levels of professional employees to ensure that they meet the new federal threshold. In addition, employers should keep in mind that New York's minimum salary threshold for the executive and administrative exemption is "inclusive of board, lodging, or other allowances and facilities" while the federal salary level must be "exclusive of board, lodging or other facilities." So, an employer that uses housing or meal allowances to meet the New York salary threshold will still need to ensure that the new federal salary threshold is met when those housing or meal allowances are not counted.

If you have any questions about this Information Memo, please contact [Subhash Viswanathan](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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