

# PREPARING FOR DOL'S NOTICE OF PROPOSED RULEMAKING (NPRM)

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The U.S. Department of Labor (DOL) published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on July 6, 2015 and invited interested parties to submit written comments on the proposed rule. DOL received more than 270,000 comments from a variety of interested stakeholders. On May 18, 2016, DOL announced the final rule updating the overtime regulations.

The final rule focuses primarily on updating the salary and compensation levels needed for executive, administrative and professional workers to be exempt. **Specifically, the final rule:**

- 1.** Sets the salary level at \$47,476 annually (compared to \$23,660 previously)
- 2.** Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to \$134,004 (compared to \$100,000 previously)
- 3.** Establishes a mechanism for automatically updating the salary and compensation levels every three years to ensure they continue to provide useful and effective tests for exemption

Additionally, the final rule amends the salary basis test, allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the new standard salary level.

**The effective date of the final rule is December 1, 2016.** The increases to the salary levels will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020. [Click here](#) for the fact sheet from DOL.

The final rule is not changing any of the existing job duty requirements to qualify for exemption. Both the standard duties test and the HCE duties test remain unchanged.

Effectively, any exempt/salaried employees currently earning less than \$47,476 will be eligible for overtime pay starting in December. **Employers will need to decide if they will:**

- Increase salaries to \$47,476 to maintain exemption status
- Limit workers to 40 hours per week
- Pay time and a half for overtime

**Prior to the December effective date, employers may need to:**

- **Re-evaluate the exempt status of current employees**
- **Evaluate job descriptions to ensure they comply with any revisions**
- **Revise overtime policies**
- **Review the organization's policies regarding "off the clock" or after-hours work, such as reading/responding to emails**
- **Review payroll and/or time and attendance systems to ensure it can accurately track hours and calculate overtime**

Longnecker & Associates is here to help if you are uncertain about the impact to your workforce, if you would like some cost modeling performed, or if you don't have the capacity to update the many documents and procedures needed to be put in place before the end of the year.

