



THE NEW OVERTIME RULE

**SAFRAN
LAW
OFFICES**



**SMITH, KESLER
& COMPANY, P.A.**

CERTIFIED PUBLIC ACCOUNTANTS
COVERING THE CAROLINAS

THE NEW RULE WILL:

- ▶ Raise salary threshold for eligibility to receive overtime from \$455/week (\$23,660/year) to \$913/week (\$47,476/year).
- ▶ Automatically update salary threshold every 3 years.
- ▶ Amend salary basis test to allow employers to use nondiscretionary bonuses & incentive payments to satisfy up to 10% of the new standard salary level.
- ▶ Become effective Dec. 1, 2016.



WHO IS COVERED BY THE FLSA?

- ▶ Employees in private sector & in federal, state, & local governments may be covered.
- ▶ Generally, employees of enterprises that have an **annual gross volume of sales made or business** done of **\$500,000 or more** are covered.
- ▶ Employees of certain entities are **covered regardless** of the amount of gross volume of sales or business done. These include: hospitals, businesses providing medical or nursing care for residents, schools (for profit or not), & public agencies.
- ▶ Even if employer isn't covered on enterprise-wide basis, employees may be **individually covered** if their work regularly involves them in commerce between states.

A WHITE COLLAR EMPLOYEE IS GENERALLY EXEMPT IF:

- ▶ (1) paid more than \$913/week (\$47,476/year) under new rule ("salary level test"); &
- ▶ (2) salaried (predetermined & fixed salary not subject to reduction because of variations in quality or quantity of work performed ("salary basis test");
- ▶ and (3) primarily performs **executive, administrative, or professional duties**, as defined in DOL regulations ("duties test").
- ▶ Certain employees aren't subject to either the salary basis or salary level tests (Examples: doctors, teachers, & lawyers).
- ▶ DOL regulations provide exemption for certain **highly compensated employees** who earn above a higher total annual compensation level (\$134,004 under this rule) & satisfy a minimal duties test.

WHAT ARE MY OPTIONS AS AN EMPLOYER?

FOR EACH AFFECTED EMPLOYEE NEWLY ENTITLED TO OVERTIME PAY, EMPLOYERS MAY:

- ▶ **(a)** increase salary of employee who meets the duties test to at least the new salary level to retain his/her exempt status;
- ▶ **(b)** pay time & a half for overtime work;
- ▶ **(c)** limit work hours to 40 per week;
- ▶ **(e)** reduce amount of pay allocated to base salary (provided employee still earns at least the applicable hourly minimum wage) & add pay to account for overtime for hours worked over 40 in the workweek, to hold total weekly pay constant;
- ▶ or **(f)** do some combination of the above.