

The Legal Strategist

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TEXAS ESOTERIC FACTS

By now you've probably heard a lot of rumblings lately about new overtime rules under the Fair Labor Standards Act (FLSA). The 300-page document outlining these rule changes entitled "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees" may create havoc with, and invite a bevy of legal actions against, employers. These changes will impact you as a small business owner. The best strategy is to be prepared.

The most popular snack foods in Texas are Frito pie (a bag of Fritos mixed with chili, onions, and cheese eaten straight from the bag), peanuts in Dr Pepper, beef jerky, jalapenos, and corn dogs.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office.

Scott Barrett

FEATURE TOPIC: FINAL RULE ON OVERTIME PAY

On May 18, 2016, President Obama and Secretary Perez announced the publication of the Department of Labor's final rule updating the overtime regulations, which will automatically extend overtime pay protections to over 4 million workers within the first year of implementation.

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:

- Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South (\$913 per week; \$47,476 annually for a full-year worker);
- Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally (\$134,004); and
- Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.
- Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.
- The effective date of the final rule is December 1, 2016. The initial increases to the standard salary level (from \$455 to \$913 per week) and HCE total annual compensation requirement (from \$100,000 to \$134,004 per year) will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

What does this mean for the small business owner? The more prepared you are for upcoming changes the easier it will be to adjust your business accordingly. The following are five steps for preparing for the revised overtime regulations:

- Review current job descriptions to ensure they accurately depict job responsibilities
- Identify exempt and non-exempt positions, with a focus on those that may be in the "gray area."
- Make sure supervisors and managers are aware of these proposed regulations. Furthermore, prepare them for the changes that are sure to come.
- Develop a contingency plan for the changes you will make in the event of an increased minimum salary threshold.
- Devise a strategy for establishing pay rates and work schedules if an employee is converted from exempt to nonexempt status.

In a perfect world, everything would stay the same regarding business rules and regulations from one year to the next. In the real world, this never happens. As a business owner, it is imperative to stay current with any and all changes that will impact your organization. Failing to do so could cause you a lot of trouble down the road.

If you would like more information on the new overtime rules and how they will affect your business, please contact [Scott Barrett](#) to set up a consultation.