

# Chapman Client Alert

May 18, 2016

Current Issues Relevant to Our Clients

## Department of Labor Issues Final Overtime Rule — What to Know Right Now

For financial institutions that have eagerly awaited the Department of Labor's (the "*Department*") final overtime rule (the "*Rule*"), the day has arrived. On May 18, 2016, the Department issued the final version of the Rule, which officially raises the salary basis threshold for "white collar" overtime exemptions to \$47,476 per year, or \$913 per week, increasing the applicability of the Fair Labor Standards Act to an additional 4.2 million employees and boosting employee wages by an estimated \$12 billion over the next 10 years. Notably, the proposed rule had included a higher figure, and had estimated that the threshold would be \$50,440. The Rule has adjusted that amount by approximately \$3,000. In addition, the highly compensated exemption has been raised from \$100,000 to \$134,000. In another change, up to 10 percent of the standard salary level can now come from non-discretionary bonuses, incentive payments and commissions, paid at least quarterly. As proposed, the new salary threshold will be updated every three years without further rulemaking to track the change in salaries in the U.S.

Though the Department had been considering adopting the California "50% rule of thumb," whereby employees would have to spend at least 50% or more of their time on exempt duties to qualify as exempt, the Rule makes no change to the current federal test, where even those who do not spend more than 50% of their time performing their major or most important duty may nonetheless meet the primary duty requirement if other factors are met.

While the Department has released limited guidance on the Rule, the task remains daunting, as the Rule will go into effect on December 1, 2016. With just seven (7) months to come into compliance, it is more important than ever for employers to conduct an internal audit and adjust, where necessary, employees' overtime classifications.

An additional benefit to a timely internal audit is any existing misclassifications in an employer's employment pool can be addressed now and misclassified employees reclassified lowering the risk of a wage-and-hour suit.

For additional information on the Rule, see our previous Client Alerts available [here](#) and [here](#).

### For More Information

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