

## Eli's Hospice Insider

### Labor Law: Double-Check Your Employees In Light Of Increased Overtime Threshold

**Although the change's impact should be minor, you're better safe than sorry.**

Employers can finally get out of white collar exemption limbo, a new Department of Labor final rule indicates.

After years of changes to the FLSA white collar exemptions for overtime pay in both regulation and in court, the DOL raises the "standard salary level" from the currently enforced level of \$455 per week to \$684 per week (equivalent to \$35,568 per year for a full-year worker); raises the total annual compensation requirement for "highly compensated employees" from the currently enforced level of \$100,000 per year to \$107,432 per year; and allows employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10 percent of the standard salary level, among other provisions, according to the final rule in the Sept. 27 Federal Register. The white collar exemption applies to executive, administrative, and professional employees.

**Background:** Under the **Obama** administration, the DOL proposed resetting the minimum salary level needed to qualify for the exemption to \$921 weekly, which could have greatly affected many home care providers. But then a Texas federal court injunction halted the rule's implementation. Earlier this year, the DOL under the **Trump** administration proposed the more modest salary level.

**Another difference:** Under the rule, "the salary threshold [will] be revisited every four years through new proposed rulemaking, rather than subject to an automatic annual lockstep increases as the Obama administration had endorsed," notes attorney **Laura Lawless Robertson** with **Squire Patton Boggs** in online analysis.

"Because the methodology has survived scrutiny for so many years," the new methodology "may be less susceptible to judicial challenge for overreach than the Obama-era proposal," Lawless Robertson said when the rule was proposed.

The rule does not include "change any of the duties tests" for the exemption, points out attorney **Melissa Cizmorris** with law firm **Akerman** in Denver, in online analysis.

While the rule may have some relevance for home care and hospice providers, it's "not likely to have a big impact," **National Association for Home Care & Hospice** President **William Dombi** predicts in the trade group's member newsletter.

Nevertheless, "this increase in the standard salary level requires an immediate review of all positions previously classified as exempt where the employee earns less than \$35,568 per year," Cizmorris urges. "The new rule takes effect on January 1, 2020, providing employers only a few months to comply."

Note: The rule, which takes effect Jan. 1, is at [www.govinfo.gov/content/pkg/FR-2019-09-27/pdf/2019-20353.pdf](http://www.govinfo.gov/content/pkg/FR-2019-09-27/pdf/2019-20353.pdf).