



Whom Does USDOL's Salary Increase Not Affect?

Insights

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There appears to be some continuing misunderstanding about exactly *which* exempt employees might be affected by the December 1 increase in the minimum salary amount required to meet the basic compensation criterion for an executive, administrative, professional, or derivative exemption under the federal Fair Labor Standards Act's Section 13(a)(1).

The coming change will have *no* impact upon some employees treated as exempt from the FLSA's minimum-wage and/or overtime provisions.

Certain "White Collar" Employees

One group as to which this is true consists of employees who meet the tests for one of the Section 13(a)(1) exemptions to which the FLSA's salary requirement does not apply. Among them are:

- Salespeople falling within the "outside salesman" exemption;
- Employees qualifying for the "teaching professional" exemption;
- Employees authorized to practice law who are actually practicing law;
- Employees authorized to practice medicine or any of its branches who are actually engaged in the relevant practice;
- Employees holding the degree required to practice medicine who are working in a medical internship or residency;
- Employees whose work meets the computer-employee exemption requirements who are paid on an hourly basis at a rate of at least \$27.63.

A Different FLSA Exemption Applies

Neither will the increased salary threshold affect the status of employees who are exempt from the FLSA's minimum-wage or overtime requirements on some basis *other than* one of the Section 13(a)(1) exemptions.

There are too many possibilities to list them all here, but examples include:

- The FLSA's Section 7(i) overtime-only exception for retail employees paid under a qualifying commission pay plan;

- The FLSA's Section 13(b)(10)(A) overtime-only exemption for "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers"; and
- The FLSA's Section 13(b)(1) "motor carrier" overtime-only exemption applying to drivers, drivers' helpers, loaders, and mechanics in qualifying circumstances.

The Bottom Line

Employers who are considering what action might be required in response to the slated salary increase should first determine whether it affects any of the employees management treats as exempt. Perhaps the change will be irrelevant as to some of them, or maybe even as to most of them.

Of course, employers should always remember that the wage-hour laws of other jurisdictions might not provide for exemptions analogous to the FLSA's or might contain similar-seeming ones that are defined in different and more-limited ways.