

# THE DEPARTMENT OF LABOR'S FINAL RULE ON INCREASING WHITE COLLAR SALARIES RECAPPED

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**O**n July 27, 2016, NAMA, through its Knowledge Source Partner, presented a webinar on the U.S. Department of Labor's (DOL) final rule increasing the minimum salary requirements under the Fair Labor Standards Act (FLSA) for the "white collar" exemptions. Members have had many great follow up questions on how to pay their employees properly based upon this new rule.

## Here is a summary of the main highlights of the new rule:

- This new rule applies only to your Executive, Professional and Administrative classifications.
- The new salary minimum for these classifications is now \$913 per week (\$47,476 annually) as of December 1, 2016.
- Operators can use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of this new standard salary level so long as it's paid quarterly. This means an operator can pay \$822/week (instead of the \$913/week) on a salary basis and then pay at least \$91/week or at least \$1,092 per quarter in nondiscretionary bonuses/incentive payments. You are allowed to make a catch-up payment in the first pay period following the quarter if the employee does not receive the incentive bonus/commission. If you do not, the EXEMPTION IS LOST and overtime is owed for the prior quarter and going forward.
- PLEASE NOTE: Route drivers are NOT included in this minimum salary. Update yourself on the Motor Carrier Exemption ("MCE") requirements for route drivers (e.g., 10,001+ lbs. GVWR trucks, out of state goods not coming to rest at your warehouse, your state law provides for the MCE, etc.). If the MCE is applicable, your route drivers must get paid at least minimum wage for your locale, not the \$913 per week.
- If your route driver is not covered under the MCE (i.e., the truck is less than 10,001 lbs. GVWR, driver only transports dismantled commissary goods, state law does not provide for it, etc.), you must pay the driver overtime and do so based upon the full compensation for the week. For example, if the driver is paid a weekly amount plus commission, the commissions needed to be added into the weekly amount and then determine the overtime pay. Explore with your counsel alternative ways of paying overtime for employees who are not exempt from overtime.
- Now is a good time to analyze your exempt positions to confirm they meet the duties test and are truly exempt positions. For example, is your

route driver manager truly a manager or is he/she a lead driver with his/her own route and sometimes oversees the other drivers? Or is this manager hiring, firing and disciplining 2 or more drivers? Is your payroll clerk clearly just doing data entry and not exercising independent discretion and judgment? Now is the time to change those positions to hourly.

- For non-exempt positions (i.e., hourly), tighten up time clock or time sheet policies and practices, including how you compensate for certain travel time situations.
- Are you training your management to enforce certain policies related to

working time, time clock procedures, meal and rest breaks, working off the clock issues, etc.?

- Give your employees a complaint mechanism if they feel they are not being paid properly, have deductions made improperly, or are being required to work off the clock.
- Are you equipped to communicate any such changes in compensation to your employees while keeping morale upbeat and not losing any momentum?
- In the end, work with your counsel on determining the best practices for your business.

Do you want more guidance but you could not attend the webinar? Email [education@namanow.org](mailto:education@namanow.org) for a copy. ■



*Heather A. Bailey, Esq., a partner with SmithAmundsen LLC and a NAMA Knowledge Source Partner for over a decade, focuses her practice on labor and employment law issues for employers. Did you know that all NAMA members receive 15-minutes of*

*complimentary human resource consultations each quarter? Heather may be contacted directly at: Direct Dial: 312.894.3266, Email: [hbailey@salawus.com](mailto:hbailey@salawus.com). Join her firm's FREE labor and employment blog at: [www.laborandemploymentlawupdate.com](http://www.laborandemploymentlawupdate.com) for the latest updates on issues affecting your vending business.*

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