

The Gift That Keeps On Giving Forever:  
The New Pennsylvania White-Collar Wage and Hour Regulations

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On Saturday, October 3, 2020 a Final Form Rule-Making was published in the *Pennsylvania Bulletin* by the Pennsylvania Department of Labor and Industry (“DLI”) regarding the so-called White-Collar Executive Exemptions from overtime. A prerequisite for this exemption is that employees are paid on a salary or fee basis and perform a certain level of duties. These “white-collar” exemptions impact Executive, Administrative and Professional Employees.

This Rule-Making is the gift that keeps on giving. Under the Rule-Making, approved Pre-COVID by the Independent Regulatory Review Commission, the salary threshold for these “white collar” exemptions will increase from the currently federally mandated salary level of \$684 weekly or \$35,568 annually, to a Pennsylvania mandated level of \$780 weekly or \$40,560 annually as of October 3, 2021, and then to \$875 weekly or \$45,500 annually effective October 3, 2022.

The gift continues to give. Effective October 3, 2023 and every third year thereafter, the Pennsylvania salary threshold increases on a formulaic basis, with the threshold figure computed by the DLI, and announced 30 days in advance and published in the *Pennsylvania Bulletin*. For practical purposes, this means that the Pennsylvania salary threshold is very likely to exceed the federal threshold as early as October 3, 2021 and is likely to continue to exceed the federal threshold for years thereafter. By 2022, the threshold is expected to be \$10,000 higher under the Pennsylvania law than it is under the federal counterpart. The federal salary threshold cannot be changed without the adoption of a new federal regulation, which is generally a time-consuming procedure. Most savvy employers already understand that the law (whether federal or state) more favorable to the employee must be applied.

Only 10% of the salary amount required may be satisfied by the payment of non-discretionary bonuses, incentives and commission payments. One catch up payment is allowed toward the prior year’s amount. This provision is similar to that in federal law.

The Rule-Making also makes some changes in the language regarding the disability exemption for disabled workers, and clarifies some of the “white collar” exemptions to more closely align the state regulation with the federal exemption language. This includes the addition of a definition of “directly related to management or general business operations” and “employment in a professional capacity,” among others.

Click [here](#) to review the actual new Rule-Making.

Bottom Line: Governor Wolf has long been a proponent of an increase in the minimum wage rate and had previously increased the minimum wage rate for non-exempt employees under his control. The unintended consequence of the Rule-Making may or may not be the reclassification of employees currently classified as exempt from overtime into a non-exempt classification. Then the required minimum wage payment is only \$7.25 per hour under both federal and Pennsylvania law, but overtime at 1.5 times the employee’s regular rate of pay is required for non-exempt employees, if those employees work over 40 hours within a single workweek. If a non-exempt

employee is inappropriately classified as “white collar” exempt, the employer may face penalties for non-payment of overtime. However, any employee may be treated as non-exempt if overtime is paid after 40 hours in a workweek, even if that employee is eligible for an executive, administrative or professional exemption.

We recommend that you review the salary levels of your exempt “white-collar” employees well in advance of the looming October 3, 2021 and 2022 deadlines to determine if you will be able to continue to meet the increasing Pennsylvania salary thresholds, and discuss the need for the required annual or tri-annual increases with your Human Resources personnel.

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