



**Here we go Again!**

New DOL Regulations  
for White Collar Exemptions

Presented by  
**Claudia D. Orr**  
**Laura Dinon**




---

---

---

---

---

---

---

---

**Today's Presenters**




**Claudia D. Orr**  
(313) 983-4863  
corr@plunkettcooney.com

**Laura M. Dinon**  
(231) 348-6417  
ldinon@plunkettcooney.com



**HERE WE GO AGAIN**




---

---

---

---

---


---

---


---

**Fair Labor Standards Act**

- FLSA is federal law that sets minimum wage, overtime, recordkeeping and youth employment standards.
- Michigan law has a counterpart that currently has a higher minimum wage rate.
- Unless **specifically exempt**, employees must receive time-and-a-half the regular rate of pay for all hours worked in excess of 40 in a **workweek** (not 80 in two workweeks, with few exceptions including hospitals, etc.).



**HERE WE GO AGAIN**




---

---

---

---

---

---

---

---

## White Collar Exemptions

- Largest category of exempt employees = “white collar” exemptions (certain executive, administrative or professional positions)

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## White Collar Exemptions

- Generally, falls within white-collar exemption only if three criteria are satisfied:
  1. Paid on salary (or in some cases “fee”) basis
  2. Meets minimum salary level
  3. Meets duties tests
    - Regulations provide specific guidance (see chart in materials)



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Road to Increasing Minimum Salary Level

- March 2014 – President Obama signed Presidential Memorandum directing DOL to update regulations.
- June 2015 – DOL issues Proposed Rule.
  - *What was proposed?*
  - \$970 per week/\$50,440 annually
- March 2016 – DOL submitted Final Rule.
  - Not fixed threshold, but tied to wage rates that will change over time.



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### 2016 Regulation Change

- May 18, 2016 – Final Rule was published:
  - New *Standard* Salary Level was to be based on 40<sup>th</sup> percentile of full-time salaried workers in lowest-income census region (currently the South).
  - New *Highly-Compensated Employee* Exemption was to be based on 90<sup>th</sup> percentile of full-time non-hourly workers *nationally*.
  - *But, 2016 regulations were struck by courts!*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### 2004 vs 2016 (Struck) Thresholds for Exemptions

- |  |   |
|--|---|
| ▪ <i>Previous</i> “Standard” salary threshold: \$23,660 annually or \$455 per week | ▪ <i>Previous</i> “Highly-Compensated Employee” annual threshold: \$100,000 |
| ▪ <b>2016</b> “Standard” salary level threshold: \$47,476 or \$913 per week        | ▪ <b>2016</b> “Highly-Compensated Employee” annual threshold: \$134,004     |



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### 2019 vs 2016 Regulations

- |  |  |
|--|--|
| ▪ 2016 “Standard” salary level threshold: \$47,476 or \$913 per week   | ▪ 2016 “Highly-Compensated Employee” annual threshold: \$134,004             |
| ▪ 2019 required salary level: \$35,568 or \$684 per week (basically split difference between 2004 & 2016 levels) | ▪ 2019 “Highly-Compensated Employee” required annual salary level: \$107,432 |



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### Progression of Increases

Minimum Salary Required (weekly):

2004 - \$455

2016 - \$913 (struck)

2019 - \$684

(exceptions remain for Mariana Islands, Guam, Puerto Rico, U.S. Virgin Islands & American Samoa, unless working for U.S. Gov. )

Highly-Compensated Employee (annually):

2004 - \$100,000

2016 - \$134,004 (struck)

2019 - \$107,432



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEARLESS.

---

---

---

---

---

---

---

---

### Amount of Salary Required Beginning Jan. 1, 2020

- \$684 / week
- \$1,368 / biweekly
- \$1,482 / semi-monthly
- \$2,964 / monthly

Shortest period that can be used is one week.



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEARLESS.

---

---

---

---

---

---

---

---

### Highly-Compensated Employee

- Must customarily and regularly perform any one or more of exempt duties/responsibilities of executive, administrative or professional employee.
- Increasing from \$100,000 to \$107,432 annually.
- If "annual period" covers both before and after Jan. 1, 2020, total compensation required first year is determined on proportional basis.

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEARLESS.

---

---

---

---

---

---

---

---

### Highly-Compensated Employee

- Must be not less than \$684 per week guaranteed (salary or fee basis) plus commissions, nondiscretionary bonuses and other nondiscretionary compensation
- \$107,432 does not include board, lodging, facilities, payments for medical or life insurance, contributions to retirement plans or cost of other fringe benefits.

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### Highly-Compensated Employee

- If total compensation does not equal \$107,432 at end of 52-week period, make one final payment within one month of last day of 52-week period. If not, this exemption will not apply (but another exemption might).



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### High-Level Computer Employees

- 2004 – \$455 per week or \$27.63 per hour (*plus* “high level” duties test)
- 2019 – \$684 per week on salary or fee basis or 27.63 per hour (*plus* “high level” duties test)



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Salary Basis & 'Nondiscretionary' Payments

- New regulations allow "nondiscretionary" bonuses, incentive payments, and commissions to satisfy up to 10% of new standard salary level (up to \$68.40 per week):

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Salary Basis & 'Nondiscretionary' Payments

- Nondiscretionary payments must be made on an annual or more frequent basis
- Employer may designate any 52-week period (calendar, fiscal or employee anniversary year). If not designated, calendar year applies.

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Salary Basis & 'Nondiscretionary' Payments

- This rule does not apply to highly-compensated employees.
- If, at end of 52-week period, sum of weekly salary plus non-discretionary payments do not equal 52 times \$684 (\$35,568 per year), employer must make additional payment to satisfy this amount.

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### Salary Basis & 'Nondiscretionary' Payments

- Employer has no later than *the next pay period* after end of 52-week period for catch up payment.
- Extra catch-up payment counts toward prior year's salary and not salary amount for year it was paid.

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### Salary Basis & 'Nondiscretionary' Payments

- If employee doesn't work full year, employee must receive *pro rata* portion of minimum amount (\$684 per week, \$35,568 per year).
- Employer may make extra payment within one pay period after end of employment.



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### Minimum Guarantee Plus Extras

- Exempt employees may receive additional compensation without violating the "salary basis" requirement or affecting exempt status, provided arrangement guarantees the required salary level (\$684 per week).

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### Minimum Guarantee Plus Extras

- Starting Jan. 1, 2020, employer can pay exempt employee \$684 per week in salary and pay additional amounts such as:
  - Commissions on sales
  - Percentage of profits

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEARLESS.™

---

---

---

---

---

---

---

---

### Minimum Guarantee Plus Extras

- Can pay additional compensation for extra hours worked beyond “normal” workweek (i.e., paid at straight time hourly amount, time and half hourly amount, flat sum, bonus payment or any other amount) or grant additional paid time off.

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEARLESS.™

---

---

---

---

---

---

---

---

### Minimum Guarantee Plus Extras

- Example: Exempt employee is paid salary of \$1,000 per week, and generally works 40 hours. During December, employee needs to work 60 hours a week. Employer may “reward” him with extra pay or grant extra paid time off.



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEARLESS.™

---

---

---

---

---

---

---

---



### Alternatives for Payments

- Exempt employees may be compensated on hourly, daily or shift basis without violating “salary basis” requirement or affecting their exempt status.
  - Arrangement must guarantee minimum weekly required amount, regardless of number of hours, days or shifts worked; **and**
  - Amount paid must have reasonable relationship between guaranteed amount and amount actually earned.

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### Alternatives for Payments

- “Reasonable relationship” test met if weekly guarantee is roughly equivalent to employee’s usual earnings at assigned hourly, daily or shift rate for employee’s normal scheduled workweek.
- Example: If employee guaranteed at least \$725/week for any week in which he performs work, and he normally works 4-5 shifts/week, he may be paid \$210/shift without violating the \$684/wk salary basis requirement.

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### Alternatives for Payments

- But must be paid on hourly, daily or shift basis.
  - However, if employee is guaranteed \$725/wk and is also paid 1% of all sales or 5% of all profits, which in some weeks may total **as much or more** than guaranteed salary, employee can’t be paid on hourly, daily or shift rate without jeopardizing exemption.

(In this example, there is no reasonable relationship to weekly guarantee and usual earnings inclusive of percentage of sales/profits paid.)



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### ...On a Fee Basis

- Administrative and professional exemptions (only) permit payment on a fee basis.
  - Test to determine whether amount of fee satisfies minimum salary level is based on amount of time it took to accomplish the work and whether that fee rate would be adequate *if* work took 40 hours.

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DEFINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### ...On a Fee Basis

- Examples:
  - Artist paid \$350 for picture that took 20 hours to complete would yield the artist \$700, if it had taken 40 hours and satisfies current \$684 requirement.
  - Artist paid \$300 for picture that took 20 hours to complete would yield the artist \$600, if it had taken 40 hours and would not satisfy current \$684 requirement.



HERE WE GO AGAIN

PLUNKETT COONEY  
DEFINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

### Mark Your Calendars!

- Becomes effective on **JAN. 1, 2020**

JANUARY 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			<b>X</b>	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Copyright © 2019 by Plunkett Cooney, P.C. All rights reserved. Plunkett Cooney, P.C. is a registered trademark of Plunkett Cooney, P.C. in the U.S. and other countries. Plunkett Cooney, P.C. is a registered trademark of Plunkett Cooney, P.C. in the U.S. and other countries. Plunkett Cooney, P.C. is a registered trademark of Plunkett Cooney, P.C. in the U.S. and other countries.



HERE WE GO AGAIN

PLUNKETT COONEY  
DEFINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## What to do Now?

- Conduct an internal wage and hour audit.
  - Identify employees whose status may be affected by proposed salary threshold.
    - Identify employees who may oscillate between exempt/non-exempt.
  - Analyze job duties of any “borderline” employees
    - Err on the side of non-exempt status (it is employer’s burden of proof.)



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## What Else Should You do Now?

- Assess impact of re-classification on employees.
  - Benefits eligibility for exempt versus nonexempt
  - New compensation plan (taking into account potential for overtime pay)
  - Redesign of job descriptions, staffing, wage/hour policies
  - Train previously exempt employees on time keeping procedures to ensure their compliance.



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Employer Options

- Raise otherwise non-exempt workers’ compensation above new threshold to maintain exemption.
- Continue to pay non-exempt employees “salaries” but require them to track time and pay time-and-a-half for all overtime worked (this increases cost of payroll and is worst deal for employers).

*Continued*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Employer Options

- Pay employees at comparable hourly rates taking into consideration amount of overtime required of positions (if calculated correctly, will maintain current payroll and number of hours worked – least change for everyone).
- Pay at comparable hourly rates, but prohibit overtime (but any overtime, even if prohibited, must be paid). This results in the same pay, but for fewer hours worked.

*Continued*



**HERE WE GO AGAIN**

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Employer Options

- Implement a non-discretionary bonus program.
- Lower employer contributions and increase employee contributions to benefit plans (such as copays for health insurance) to offset any extra payroll.
- Eliminate discretionary benefits such as STD, LTD, dental, etc. to offset extra payroll.

*Continued*



**HERE WE GO AGAIN**

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Employer Options

- Consider whether lunches should be paid/unpaid for newly non-exempt employees (and others).
- Consider alternative payment plans for exempt employees.



**HERE WE GO AGAIN**

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Formalize Reclassifications

- Formalize necessary reclassifications:
  - Ensure correct job descriptions/title in file.
  - Ensure all individuals in a specific position are classified correctly.
  - Communicate changes to employees and have them sign new job descriptions.
  - Follow-up with employees to ensure smooth transition.



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## The Effect

Inevitable result:

*Companies may have more non-exempt employees.*



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Look for Silver Linings

- Perfect opportunity to fix past inadvertent classification mistakes and update timekeeping procedures
- Allows employers to reconsider whether classifications are accurate in light of potential changes to job duties/descriptions



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Michigan's Paid Medical Leave Act

- Updates?



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Questions?



**Claudia D. Orr**  
(313) 983-4863  
corr@plunkettcooney.com



**Laura M. Dinon**  
(231) 348-6417  
ldinon@plunkettcooney.com



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

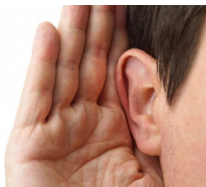
---

---

---

## Post-Webinar Survey

We want to  
hear from you!



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEASIBLE.™

---

---

---

---

---

---

---

---

## Continuing Education Credits



SHRM  
SHRM-CP | SHRM-SCP  
RECERTIFICATION  
PROVIDER  
2019



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEARSLESS.

---

---

---

---

---

---

---

---

## Event Page... Please Share!

**Events**

**Here we go Again!**  
New DOL Regulations for White Collar Exemptions

**ATTORNEYS**  
Lucia M. Dixon  
Claudia D. Orr

**GET WEBINAR**  
11/07/2019  
Share

**PLEASE CLICK HERE TO REGISTER.**

**PRACTICE AREAS**  
Employment Litigation  
Human Resources Services  
Labor & Employment Law  
Labor Law

**HERE WE GO AGAIN!**  
New DOL Regulations for White Collar Exemptions  
(and How HR & Payroll Teams Got into it too)

**Date:** November 7, 2019  
**Time:** Noon to 1:15 p.m.  
**Cost:** Complimentary

Following a recent Department of Labor (DOL) announcement, employers have less than three months to get their Fair Labor Standards Act (FLSA) houses in order when it comes to



HERE WE GO AGAIN

PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEARSLESS.

---

---

---

---

---

---

---

---

## Upcoming Webinar

The **Sophisticated Employer**  
Webinar Series



January 16, 2020 • Noon to 1:15 p.m.

---

---

---

---

---

---

---

---

## Blogs... Please Follow!



Subscribe

- RSS
- Email
- Plunkett Cooney LinkedIn Page
- Plunkett Cooney Facebook Page
- Plunkett Cooney Twitter Page

### Lessons Learned – Part Three – The Oral Contract

Appellate court found employer's verbal agreement may constitute an enforceable employment contract, although the written agreement was never signed.

[Continue Reading](#)



**HERE WE GO AGAIN**

**PLUNKETT COONEY**  
DETERMINED. DISTINCTIVE. FEARLESS.

---

---

---

---

---

---

---

---

## Have a Great Day!



**HERE WE GO AGAIN**

**PLUNKETT COONEY**  
DETERMINED. DISTINCTIVE. FEARLESS.

---

---

---

---

---

---

---

---