

Employer Alert: Proposed Regs Allow More Employees To Be Eligible for Overtime



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On July 6, 2015, the Department of Labor (“DOL”) proposed new regulations that would significantly raise the salary requirements for executive, administrative, professional, and computer professional employees (“white collar workers”) to be considered “exempt” under the Fair Labor Standards Act (“FLSA”). As a result, many employees will lose exempt status and will become eligible for overtime.

Under the current rule, the “white collar” exemptions apply only to employees who meet each of three tests: 1) the employee is paid a fixed salary that cannot be reduced based on the quality or quantity of the employee’s work; 2) the employee’s salary meets a minimum specified amount; and 3) the employee’s job duties involve primarily executive, administrative, or professional duties which are defined in the DOL regulations.

The proposed update to the regulations attempts to ensure that the FLSA’s overtime protections are implemented as Congress intended and to simplify the identification of employees who meet the requirements for exemption. Employees who fail to meet the salary and compensation level thresholds will not be exempt from overtime, regardless of their duties.

The DOL issued the following statement about the new rule and its intended effect:

Today the Department of Labor has announced a proposed rule that would extend overtime protections to nearly 5 million white collar workers within the first year of its implementation. Failure to update the overtime regulations has

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left an exception to overtime eligibility originally meant for highly-compensated executive, administrative, and professional employees now applying to workers earning as little as \$23,660 a year. For example, a convenience store manager, fast food assistant manager, or some office workers may be expected to work 50 or 60 hours a week or more, making less than the poverty level for a family of four, and not receive a dime of overtime pay. Today's proposed regulation is a critical first step toward ensuring that hard-working Americans are compensated fairly and have a chance to get ahead.

Key Provisions

The key provisions of the proposed rule are:

1. Increasing the standard salary threshold for exempt workers.

Under the current regulations, the salary threshold for exempt white collar workers is a minimum salary of \$455 per week (\$23,660 per year for a full-time worker). The proposed rule would increase the salary threshold to the 40th percentile of weekly earnings for full-time salaried workers, which for 2016 is projected to be \$50,440 a year. Therefore, regardless of the employee's duties, if the employee does not earn \$50,440 a year, the employee is not exempt from overtime.

2. Increasing the highly compensated employees' total annual compensation requirement for exemption.

Under the current rules, the annual salary threshold for highly compensated employees to be considered exempt is \$100,000. The proposed rule would increase this amount to the 90th percentile of earnings for full-time salaried workers, which is \$122,148.

3. Establishing a mechanism for automatically updating the salary and compensation levels going forward.

The DOL proposes an automatic update for the standard salary and highly compensated executive total annual compensation requirements to ensure that the test for exempt status remains meaningful and up to date. The DOL has updated the salary level requirement only seven times since 1938, most recently in 2004.

Other Potential Updates to the Rules and Commenting

The DOL has not proposed any changes to the current duties test; however, it is soliciting suggestions for additional occupation examples and comments on the current requirements. The DOL also seeks comments on the possibility of including nondiscretionary bonuses to satisfy a portion of the standard salary requirement.

Interested parties should submit written comments on the proposed rule on or before September 4, 2015, identified by Regulatory Information Number (RIN) 1235-AA11, by either of the following methods: (1) www.regulations.gov or (2) by mail addressed to Mary Zeigler, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210. Only comments received during the comment period will be considered part of the rulemaking record. Please be advised that comments received will become a matter of public record.

Brooks Pierce Summer Associate Ben Charlton contributed to this client alert.