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LEGAL UPDATES

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Here We Go Again: DOL Releases Proposed Salary Increase for Overtime Exception

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On March 7, 2019, the Department of Labor (DOL) issued a proposed rule to increase the salary under the Fair Labor Standards Act (FLSA) to qualify as exempt from overtime obligations for otherwise qualified administrative, executive and professional employees. Other proposed changes include the addition of a mechanism for updating salary exemption levels, and changes to the compensation level to qualify as a highly compensated worker. The new rule is expected to take effect by January 1, 2020.

Proposed FLSA Overtime Rule

The DOL's new federal wage and hour rule includes the following provisions:

Establishes a new salary threshold entitling workers who earn less than $35,308/year ($679/week) to overtime pay.

Allows employers to include up to 10% of nondiscretionary bonuses and incentive payments to calculate the salary threshold.

Establishes a new total annual compensation requirement for highly compensated employees to an annual compensation level of $147,414.

Requires an update in salary threshold levels every four years with a notice and comment period to precede any increase in the salary threshold level.

Maintains the existing requirements under the job duties test.

Current law requires employers to pay overtime to workers receiving less than $23,660 annually ($455/week). Workers who make at least $23,660 are exempt from receiving overtime pay depending on their job duties.

Additionally, under current rules, highly compensated employees who earn $100,000 or more are exempt from overtime pay so long as they meet certain other white collar conditions.

Consistent with DOL Secretary Acosta's comments during his confirmation hearing, the DOL increased the salary threshold, but at roughly half the amount proposed by the Obama Administration. Conversely, the DOL proposed a highly compensated worker threshold level at roughly $13,000 more than the level proposed by the Obama Administration. Importantly, there is no proposal to alter the "duties test" under the FLSA rules to otherwise qualify for exempt status.

What This Means to You

Based on the DOL proposed rule, employers are advised to review whether there are current exempt employees who may be receiving compensation at a level less than the proposed $35,308 standard, and to analyze the impact of the new regulations. Employers may wish to consider whether certain employees may be reclassified to a nonexempt status. The hourly rate chosen for those employees should result in the same total pay for the same hours worked, but need not unnecessarily inflate the total compensation amount. Employers should be aware of the ripple effect, as well, when choosing to set an hourly rate for a supervisor, administrative or professional employee and how that rate compares with other employees. Of course, increases in salary can be considered, and employers can likewise increase the duties of those affected employees. This is also a great time to review and confirm that employees are properly considered exempt under the duties test, and make adjustments as appropriate.

Contact Us

If you have questions about the implications of the DOL proposed rule or a related issue, please contact Tom Godar or your Husch Blackwell attorney.

Tracey Oakes O'Brien was a contributing author of this content.