

What Employers Need to Know about the Department of Labor's Proposed New Rule For Raising the Salary Threshold

Employers with employees classified as exempt under the Fair Labor Standards Act's (FLSA) "white collar" exemptions should be aware of the Department of Labor's (DOL) proposed new rule.

On March 7, 2019, the DOL issued its proposed overtime rule, which would raise the salary basis threshold for exempt employees, such as executive, administrative, and professional workers. Currently, "white collar" employees are exempt from overtime and employers are not required to pay time and a half to those employees who work over 40 hours a week. This exemption is contingent on employees being paid a salary of no less than \$455 a week and performing specific tasks that are not considered exempt under the FLSA. Such workers are considered exempt under the FLSA's executive, administrative, professional, or outside sales exemptions.

If accepted, this new rule would replace the 2016 Obama rule, which attempted to double the minimum salary to qualify for exemption from \$23,660 to over \$47,000 but was blocked by a permanent injunction in a Texas court.

The DOL is now proposing a new rule that:

- Raises the salary threshold from \$455 per week (\$23,660 per year) to \$679 per week (\$35,308 per year);
- Allows employers to include "certain nondiscretionary bonuses and incentive payments" as up to 10% of the new \$679 per week salary threshold;
- Raises the total annual compensation requirement for highly compensated employees – which are subject to a minimal duties test – from \$100,000 to \$147,414. That amount is about \$13,000 *higher* than the Obama administration's rule; and
- Salary levels would be updated every four years after notice-and-comment periods.

Employers have 60 days to submit their comments and concerns regarding the potential new rule. After expiration of that 60 day period, the comments will be considered by the DOL and a final rule will be published. If this new rule is approved, the DOL estimates that it would take effect in January 2020 and provide overtime protections to more than 1 million workers who are not currently eligible for overtime. Employers should take note of this proposed new rule and start developing a strategy for transitioning the status of currently exempt employees who qualify under the proposed new rule to non-exempt status.

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for 2019 or any other laws that may affect your business, or would like to schedule an initial consultation, please contact Korey Richardson, LLP at 312-372-7075.