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U.S. Department of Labor Proposes Changes to Overtime Rules, Increasing the No. of Eligible Workers

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Take Away: On June 30, 2015, the Department of Labor (DOL) issued a Proposed Rule and Request for Comment addressing some of the most commonly relied on white collar exemptions from the Fair Labor Standards Act (FLSA) overtime pay requirements. The DOL has proposed to raise the amount of salary a salaried employee needs to be paid to qualify as an exempt employee. DOL also proposes to raise the salary threshold from its current $100,000 in order to qualify as a highly-compensated employee, exempt from overtime. The proposed regulations would, for the first time, also make automatic annual increases in both thresholds without the need for new rulemaking. The DOL is also considering and soliciting comments regarding revisions to the duties tests for the white collar exemptions (executive, administrative, professional, computing and outside sales positions).

Overview: The current changes proposed by the DOL are significant and can have an extensive financial impact. Supporters of the change argue that increasing the thresholds will raise salaries for millions of workers now considered exempt by mandating overtime pay for them. They also argue that if employers choose not to have workers work overtime, it will increase employment. Opponents of course argue the opposite, believing it will reduce jobs for American workers. Observers expect the rules to go in effect sometime in 2016.

The White Collar Exemption

Presently, to be exempt under a white collar exemption, an employee's primary duties must be executive, administrative, professional, computing, or outside sales (as defined by regulation) and the employee must be paid at a salary of at least $455 per week (approximately $23,660 per year). Employees in computer-related positions can either be paid the salary threshold or on an hourly basis at a rate of no less than $27.63 (unchanged by the proposal). Under the proposed rule, if implemented today, the salary threshold for the white collar exemption would increase to $921 per week ($47,892 per year). The proposed rule would actually set the new salary threshold at the 40th percentile of weekly earnings for full-time salaried workers as calculated by the Bureau of Labor Statistics (BLS) at the time the rule is finalized. If the rule goes into effect in 2016, these amounts are estimated to be $970 per week and $50,440 per year.

The DOL has also solicited comments on whether to allow nondiscretionary bonuses to satisfy a portion of the standard salary requirement.

The Duties Test

The proposed rules do not make any changes to the current duties tests for employee qualifications under the white collar exemption. However, the proposed rules do seem to suggest that there may be changes ahead for the duties tests. The DOL has specifically requested comments on whether the current duties test should be modified and what other occupation specific examples should be added to the regulations.

Highly Compensated Employees

In addition to increasing the salary threshold under the white collar exemption, the DOL proposes to increase the salary threshold for highly-compensated exemption from $100,000 a year to what would be $122,148 a year if implemented today. This increase would align with the 90th percentile of earnings for full-time salaried workers as calculated by BLS as of the time the rule is finalized.

Automatic increases in salary thresholds

For the first time, the DOL proposes to automatically update the salary threshold annually, either based on the BLS earnings percentiles or by indexing the increase to inflation (the DOL comments on which approach it should choose). This proposed automatic update would also apply to both the white collar and highly-compensated salary thresholds.

Employer Considerations: The financial impacts start with employer decisions about how to handle the working hours of newly non-exempt employees. That is, even if currently exempt employees become non-exempt because the employer does not increase the salary to meet the new threshold, the employer can still strictly circumscribe overtime and work hours in order to avoid increased payroll costs. There is, of course, a productivity issue which may lead employers to hire new employees to get the work done without incurring overtime costs. Each employer will have to perform a financial calculation for different types of employees regarding whether payment of potential overtime or increased hiring is more or less costly than simply increasing an employee's salary to meet the exemption threshold. The same is true for highly-compensated employees. For employers who do end up reclassifying employees as nonexempt, they will also have to start tracking hours in order to calculate when and how much overtime is due.

The duties tests, and any changes to them, may be a more complicated issue because it could change how an employer actually operates its business day-to-day. However, without more information from the DOL, employers do not yet have to take any action.