DOL Seeks to Cover More Employees with Overtime Protections

July 1, 2015

After years of anticipation, the U.S. Department of Labor (DOL) released its Notice of Proposed Rule Making on June 30, 2015, revising the overtime exemptions under the Fair Labor Standards Act (FLSA) by targeting salary requirements.

The FLSA requires a covered employer to pay overtime to its employees for all hours worked over 40 in a workweek, unless that employee meets the salary and duties requirements of one or more of the overtime exemptions. At present, an exempt employee must be paid a salary of no less than $455 per week, or, if treated as a highly compensated exempt employee, no less than $100,000 annually.

The proposed regulations identify three specific changes in the current "salary basis" regulations:

• First, the standard required salary level would be equal to the 40th percentile of earnings for full-time salaried workers. This would mean an exempt employee would need to be paid a salary of no less than $921 per week based on 2013 data. The DOL anticipates that if the 40th percentile remains unchanged during the rulemaking process, data from the first quarter of 2016 will likely result in a salary requirement of $970 weekly (or $50,440 annually).

• Second, the annual compensation level for the exempt highly compensated employee would be set at the annualized value of the 90th percentile of weekly wages of all full-time salaried employees (i.e., $122,148 per year).

• Third, these salary and compensation levels would automatically update annually.

Although not making specific proposals to modify the standard duties requirements for exempt employees, the DOL is seeking comments on whether the current duties tests are working as intended to screen out employees who are not bona fide executive, administrative, or professional employees.

The DOL will accept comments from the public for the period ending 60 days after the proposed regulatory changes are published in the Federal Register. Currently the regulations are only available on the DOL website. Anyone wishing to submit a comment may contact Miller Canfield for assistance.

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