

Department of Labor Proposes Another New Overtime Rule

March 12, 2019

The Department of Labor (DOL) has issued a Notice of Proposed Rulemaking, proposing changes to the salary threshold for the white collar exemptions under the Fair Labor Standards Act (FLSA). If the proposed rule from March 7th, 2019, goes into effect, it would increase the minimum salary required for an employee to qualify for most exemptions from the currently enforced level of \$455 per week (\$23,660 per year) to \$679 per week (\$35,308 per year). Although the DOL sought in 2016 to change the salary threshold to \$913 per week (\$47,476 per year), that proposed rule was invalidated by a United States District Court in Texas. If implemented, the proposed new rule would be the first time a salary threshold change has been implemented since 2004.

The proposed rule, which does not change the job duties tests under the current regulations, would allow employers to include nondiscretionary bonuses and incentive payments (i.e. commissions) to satisfy up to 10% of the standard salary level, so long as those payments are paid at least annually.

Instead of creating a new methodology for increasing salary levels, as the 2016 rule set out to do, the current proposed rule applies the same methodology as was used in 2004 to set the standard salary level. The 2004 final rule set the standard salary level threshold at the 20th percentile of earnings for full-time, salaried workers in the lowest-wage census region. Applying that methodology to 2017 data resulted in the currently proposed salary level changes. The proposed rule does not automatically increase the salary level, but it does recommend salary updates occurring every four years.

In addition to increasing the standard salary level for white collar employees, the proposed rule would also update the total annual compensation requirement for "highly compensated employees." Currently, an employee who is guaranteed total annual compensation of at least \$100,000 and who customarily and regularly performs one or more of the exempt duties or responsibilities of an executive employee is exempt from overtime requirements. The proposed rule would increase the salary threshold for highly compensated employees to \$147,414 per year.

Right now, the changes are just a proposal. The DOL anticipates a slight adjustment to the figures, and will use 2018 data to develop the final rule. The DOL also estimates that this rule will not go into effect until sometime in 2020.

WHAT THIS MEANS FOR EMPLOYERS

Employers with employees who are currently treated as exempt from FLSA minimum wage and overtime rules can expect to be affected by the new regulations if and when they are enacted. Those who would be affected by these impending changes will have the opportunity to submit comments regarding the proposed regulations once they are published in the Federal Register. This can be an effective way for employers to shape the new regulations. We will keep you informed once the proposed regulations have been published and the deadline for comments has been set.

For further guidance or more information on FLSA salaried employee exemptions, please contact any of the authors or your Miller Canfield attorney.