

United States Department of Labor Proposes Increased Salary Threshold for Employees to Maintain Exemption From Overtime

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The U.S. Department of Labor (DOL) announced today a notice of proposed rulemaking to raise the salary threshold for “white collar” minimum wage and overtime pay exemptions. The proposed rule would increase the minimum annual salary threshold from \$684 per week (\$35,568 annualized) to \$1,059 per week (\$55,068 annualized) to qualify executive, administrative, and professional positions as exempt from the Fair Labor Standards Act’s (FLSA) minimum wage and overtime requirements. To be exempt from overtime, an employee must meet both a salary test and a duties test. If the proposed rule becomes effective, employers will be required to pay their employees at least \$1,059 per week to meet the minimum salary threshold to maintain exemption under the FLSA’s “white collar” exemptions.

In addition to the “white collar” exemptions, the highly compensated employee exemption is another popular exemption. If the proposed rule becomes effective, the new total annual compensation to meet the highly compensated employee exemption will rise from \$107,432 to \$143,988. At least \$1,059 would have to be paid per week on a salary or fee basis, and the remainder could be paid as a nondiscretionary bonus or on another approved basis.

Calling the current rules “outdated and out-of-sync,” the DOL also has proposed including a mechanism to automatically increase the salary threshold and total annual compensation requirement for “white collar” and highly compensated employee exemptions, respectively, every three years to reflect current earnings data.

Upon publication in the Federal Register, which the DOL says is pending, the proposed rule will be open for public comment for 60 days. The DOL has said it will consider all comments received before publishing a final rule. The DOL proposes that all aspects of the rule become effective 60 days after a final rule is published. In the past, there have been legal challenges in court to raising the salary threshold, so employers are encouraged to wait until a final rule is set to become effective before taking any definitive action.

As a reminder, to be exempt, employees must meet not only the federal exemption requirements under the FLSA but also any state-specific requirements, which may include a higher salary threshold than even the proposed federal increase. New York and California, for example, are two states with higher salary thresholds than under the FLSA.

Employers should be mindful of these proposed changes and take steps to review their compensation and classification practices to ensure compliance with federal and state law as it evolves. Lowenstein Sandler’s Employment Counseling and Litigation practice group is experienced and knowledgeable about wage and hour compliance and would be pleased to provide legal counsel if you have questions.

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