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DOL Proposes to Increase Threshold for White-Collar Overtime Exemptions

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Earlier this month, the Department of Labor (DOL) reissued proposed regulations governing the salary level required to be exempt from overtime pay requirements. The new regulations set the salary threshold at \$679 per week (up from \$455 per week currently) or \$35,308 annually (up from \$23,660 currently) for the white-collar exemptions to overtime compensation. These salary figures are significantly less than the \$913 per week or \$47,476 annually that was set by DOL in 2016, but never became effective.

Under the proposed rule, the annual compensation threshold for the “highly compensated employee” will also increase to \$147,414 from \$100,000 currently. In addition, DOL proposes to allow up to 10 percent of the standard salary to include nondiscretionary bonus and incentive payments. The salary threshold has not been adjusted since 2004, and the DOL estimates that more than one million workers will be affected by the proposed adjustments.

Similar to the 2016 regulations, the duties tests for exemptions are not proposed to be adjusted by these new proposed regulations.

Proposed Changes in a Glance

	Current	Proposed	✂
Weekly Salary Threshold	\$455/week	\$679/Week	
Annual Salary Threshold	\$23,660/yr	\$35,308/yr	
Highly Compensated Annual Salary Threshold	\$100,000/yr	\$147,414/yr	

In anticipation of these new salary thresholds, employers should analyze employee classification to ensure that they comply with these new regulations once effective. At a minimum, employers should be looking at pay practices for positions classified as exempt executive, administrative, and professional employees. The regulations are currently in the notice and comment period, so there could be revisions before the regulations take effect.

In addition, with the extensive state and locality wage-and-hour legislation that has passed in the last few years, employers must confirm that their pay practices not only comply with the Federal Fair Labor Standards Act (FLSA) administered by the DOL, but also comply with any applicable state or local laws, which may be more favorable for

employees than the federal requirements.

For government contractors with contracts covered by the Service Contract Labor Standards Act (formerly the Service Contract Act), consideration must also be made for potential impact of reclassification of workers under their covered contracts. By definition, only employees who are not exempt from overtime, e.g., executive, administrative, or professional, are considered “service employees” subject to minimum hourly wage and fringe benefit requirements. If formerly exempt employees are reclassified as non-exempt, then contractors will need to determine the appropriate SCA labor category for these individuals as well (which very well may be difficult if their duties would otherwise meet the second part of the exemption test).

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