

Department of Labor Proposes Rule That Would Entitle Millions of Employees to Overtime Compensation

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On August 30, 2023, the Department of Labor (“DOL”) announced a proposed rule that seeks to significantly raise the minimum salary threshold needed to qualify for overtime-pay exemptions under the Fair Labor Standards Act (“FLSA”). If the rule takes effect, it’s estimated that an additional 3.6 million employees will become entitled to overtime compensation.

Current FLSA Overtime-Pay Exemptions

The FLSA requires employers to pay their employees overtime pay (1.5 x the regular rate) for all hours worked in excess of 40 hours per week. However, certain employees are exempt from this requirement, including those that qualify for the White-Collar Employee Exemption (the “WCE Exemption”) or the Highly Compensated Employee Exemption (the “HCE Exemption”).

To qualify for the WCE Exemption, an employee must (1) be paid on a salary basis and earn at least \$684 per week and (2) perform certain executive, administrative, or professional duties as defined by DOL decisions and guidance. Similarly, an employee qualifies for the HCE Exemption if she (1) earns at least \$107,432 per year and (2) performs one or more of the duties identified in the WCE Exemption.

Proposed Changes

The proposed rule seeks to increase the minimum salary thresholds for the WCE Exemption and the HCE Exemption. Specifically, the rule raises the weekly salary level to qualify for the WCE Exemption from \$684 per week (\$35,568 per year) to \$1,059 per week (\$55,068 per year). Further, the rule increases the annualized salary threshold for the HCE Exemption from \$107,432 per year to \$143,988 per year. Finally, the rule also implements a process through which both of these salary thresholds would automatically update every three years to account for inflation.

Significance for Employers

Although the proposed rule will likely face legal challenges in the coming months, employers should nevertheless develop a preliminary plan to respond to the anticipated increases. Employers should evaluate which of their employees are currently earning below the proposed minimum thresholds described above. Moreover, employers should determine whether it would be more cost-efficient to increase an employee’s salary to meet the minimum threshold or convert the employee to non-exempt hourly and begin paying the employee overtime compensation for all hours worked in excess of 40 per week.

In making these determinations, employers should consider a variety of factors, including state regulations and the costs associated with implementing procedures to track and record employees’ hours. Employers should also be mindful of the fact that some employees like the prestige/professional status associated with being exempt/salaried and not having to track their hours.

A copy of the proposed rule can be found [here](#).

The Seigfreid Bingham team will continue to monitor the latest developments and legal requirements in this area of law. If you have any questions concerning the Department of Labor's proposed increases to salary thresholds, please do not hesitate to contact the firm's Employment Law attorneys for further information concerning compliance for your specific situation.

This article is general in nature and does not constitute legal advice. If you have legal questions, please consult the authors, Cody Weyhofen (CWeyhofen@sb-kc.com) 816.265.4163 and John Vering (jvering@sb-kc.com) 816.265.4109, or any of the other attorneys in Seigfreid Bingham's Employment Law Group, including: Mark Opara (mopara@sb-kc.com) 816.265.4140, John Neyens (johnn@sb-kc.com) 816.265.4152, Shannon Cohorst Johnson (sjohnson@sb-kc.com) 816.265.4139, Brenda Hamilton (bhamilton@sb-kc.com) 816.265.4103, Julie Parisi (jparisi@sb-kc.com) 816.265.4159, Christopher Tillery (ctillery@sb-kc.com) 816.265.4157, or your regular contact at Seigfreid Bingham at 816.421.4460.