

HRW Alert: U.S. Department of Labor Proposes Regulatory Changes that Would Greatly Expand the Number of Non-Exempt Employees

The U.S. Department of Labor (DOL) recently issued its long anticipated proposal to update the regulations on overtime exemptions for certain “white collar” employees.¹ Under the Fair Labor Standards Act, workers are entitled to overtime pay of 1 ½ times their regular rate of pay for hours worked over 40 in a workweek, but there are exemptions for executive, administrative, and professional employees (among other exemptions). In order to qualify for one of these three exemptions, an employee must meet both a “duties” test and a “salary” test. The new proposed regulations would modify the salary test by increasing the minimum required salary from \$455/wk. (\$23,660 annually) to \$921 per week (\$47,892 annually). In 2016, the minimum would be further raised to \$970 per week (\$50,540 annually). The salary levels were last updated in 2004.

In addition, the DOL’s proposed changes would:

- Increase the requisite total compensation level for employees to qualify as exempt “highly compensated employees” (HCE’s) from the current \$100,000 per year to \$122,148 per year; and
- Automatically update the salary and total compensation thresholds in the future. Specifically, the DOL’s proposal would set the salary test level at the 40th percentile of weekly earnings for full-time salaried workers, and set the total compensation requirement for HCEs at the 90th percentile.

The DOL’s *Notice of Proposed Rulemaking* invites the public to submit comments on the proposed changes in writing by September 4, 2015. Comments may be submitted at www.regulations.gov. Along with the proposed salary changes, the DOL is also seeking comments regarding the current “duties tests” and on possibly including other compensation such as bonuses when calculating an employee’s compensation under the salary test. The DOL, however, is not currently proposing any changes in these areas.

The proposed change, which is likely to go into effect, will result in a significant expansion of the number of workers entitled to overtime pay.

HRW will continue to update its clients concerning any new developments. Employers with questions in the meantime should contact HRW’s attorneys.

¹ www.dol.gov/whd/overtime/NPRM2015/factsheet.htm