

DOL's Long-Awaited Overtime Proposed Rule Announced

By Sadina Montani and Monique E. Chase

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Recent developments on the wage and hour front will soon require employers to reexamine exemption classifications within their workforce.

On March 7, 2019, the U.S. Department of Labor ("DOL") released its long-awaited proposed amended rule to the overtime provisions of the Fair Labor Standards Act ("FLSA"). If this proposed rule takes effect, the minimum salary threshold required for workers to qualify for the FLSA's "white collar" exemptions (executive, administrative and professional) will be increased to \$35,308 annually (or \$679 per week). The current salary threshold under the FLSA's "white collar" exemptions is \$455 per week (\$23,660 annually), and has not seen an increase since 2004.

The proposed rule also will increase the salary threshold for the "highly compensated employee" exemption, from the current \$100,000 to \$147,414 per year. Further, under the proposed rule, employers will be allowed to count certain nondiscretionary bonuses and incentive payments (including commissions) toward up to 10 percent of the new salary threshold.

By way of background, in May 2016, the DOL under President Obama issued a rule intended to increase the salary threshold to \$913 per week (\$47,476 annually). Other changes to the rule included an increased salary threshold for highly compensated workers from \$100,000 to approximately \$134,000 and a schedule for automatic increases to the salary threshold.

Days before the rule was set to take effect, a Texas federal district court preliminarily enjoined the rule, and later confirmed its ruling on the basis that the new regulations placed too much emphasis on the salary requirement and would have resulted in the reclassification of substantial groups of employees who otherwise performed duties qualifying for exempt status. At the time, the DOL predicted that its rule would cover about four million workers who were presently non-exempt.

While the DOL's newly proposed rule is set to take effect in January 2020, it is subject to a 60-day comment period and may face legal challenges from business and worker advocate groups alike. Given that *some* increase to the salary threshold is imminent, employers should nevertheless remain proactive and audit their exempt worker population. [As we have noted in prior publications](#), employers have a number of options available in addressing this issue. As a first step, employers should identify all positions in their organizations that are classified as exempt but pay less than \$35,308, review employees' job descriptions for compliance under each exemption's duties test, and determine the number of hours exempt employees are working.

If you have any questions regarding the issues in this article, please contact: **Sadina Montani** 1+ (202) 312- 3363, **Monique E. Chase** 1+ (212) 407- 7774 or any Vedder Price attorney with whom you have worked.

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