

DOL Proposes Rule That Will Raise the Minimum Salary Threshold for Overtime Eligibility under the FLSA

By Allison Czerniak

August 31, 2023

On August 30, 2023, the U.S. Department of Labor (“DOL”) issued a new proposed [rule](#) pursuant to which certain workers who are otherwise exempt will be eligible for overtime pay if they do not receive an annual salary or total compensation that is significantly higher than the thresholds set by current Fair Labor Standards Act (“FLSA”) rules.

Under the proposed rule, salaried workers in FLSA executive, administrative, professional and/or certain computer-related positions who make less than \$55,000 a year, or \$1,059 a week, will become eligible for overtime pay. The proposed rule reflects a \$19,432 increase in the minimum annual salary an employee must be paid to be exempt. Currently, an executive, administrative or professional employee, or an employee who performs certain computer-related duties, must make only \$35,568 a year, or \$684 a week, to be exempt from overtime.

The DOL’s proposed rule would also increase the total annual compensation an individual must be paid to qualify as a highly compensated employee under the FLSA. Currently, employees can qualify for the exemption if they are paid at least \$107,432 annually. The proposed rule increases that annual threshold to \$143,988.

The proposal also provides that the above-referenced annual salary and total compensation thresholds will automatically update (and likely increase) every three years based on “current wage data.”

The last increase to the minimum annual salary an employee could be paid to qualify for an overtime exemption occurred in 2019, when it was raised from \$23,660 to \$35,568 per year. In 2016, the Obama Administration implemented a rule which raised the salary threshold to \$47,476, but was subsequently invalidated by a federal court in Texas. It is possible that the DOL’s current proposed rule will face similar legal challenges.

Publication of the proposed rule kicks off a 60-day public comment period. If finalized, the DOL estimates the change will result in approximately 3.6 million additional workers being eligible for overtime pay. In anticipation of these significant changes to the FLSA overtime requirements, employers should pay close attention to developments pertinent to the proposed rule and prepare to audit their pay practices should the rule go into effect.

If you have any questions about this article, please contact Allison Czerniak at aczerniak@vedderprice.com or any other Vedder Price attorney with whom you have worked.

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