

Labor and Employment Alert

July 1, 2015

Proposed DOL Rule Seeks to Require the Provision of Overtime Pay to Millions of Additional Employees

The Department of Labor (DOL) has announced a proposed rule that would amend the executive, administrative and professional exemptions under the Fair Labor Standards Act (FLSA). The exemptions exclude workers in such positions from the minimum-wage and overtime-pay requirements of the FLSA.

The DOL estimates that, in the first year of the proposed rule, approximately 4.6 million workers that are now exempt under current regulations would become entitled to overtime payments under the FLSA. Under the current salary test, employees qualify for the above exemptions only if they receive a salary that exceeds \$455 a week (equivalent to \$23,660 for a full-year worker), in addition to meeting other requirements related to their job duties. Under the proposed rule, the minimum salary threshold would increase to \$921 per week (equivalent to \$47,892 annually and equal to the 40th percentile of earnings for full-time salaried workers) and would be automatically adjusted via a to-be-determined formula. Additionally, the DOL's proposed rule seeks to adjust the highly compensated employee (HCE) annual compensation level from \$100,000 to \$122,148 annually, or equal to the 90th percentile of earnings for full-time salaried workers (so-called HCEs must also perform certain job duties, though the requirements are less stringent than for non-HCEs).

Generally, each of the above three exemptions require that the (1) employee be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the "salary basis test"); (2) amount of salary paid meet a minimum specified amount; and (3) employee's job duties primarily involve executive, administrative or professional duties as defined by the regulations (the "duties test"). However, the DOL has long recognized that the salary test is the "the best single test" of exempt status.

In the proposed rule, the DOL claims that the creation of a "bright-line" based on salary level will best serve to ensure that employees are not misclassified. Notably, and somewhat unexpectedly, the DOL has not proposed any changes to the duties test, but rather is seeking comments on whether the various duties tests are working as intended to screen out employees who are not bona fide exempt employees. In this regard, the proposed rule states that, "in particular, the Department is concerned that in some instances the [duties test] may allow exemption of employees who are performing such a disproportionate amount of nonexempt work that they are not [white collar] employees in any meaningful sense."

The DOL's proposed rule has not yet been published in the Federal Register, and, thus dates for public comment have yet to be determined. Traditionally, such periods typically last for 60 days, with an additional period of 30 days for reply comments (although original comments may still be submitted during the reply comment period), following publication in the Federal Register.

Contact Information

Akin Gump Strauss Hauer & Feld LLP will closely monitor the proposed rule and any comments submitted regarding the rule. Should you or your business have any questions about the rule or its potential application to your workforce, please contact:

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