Department of Labor Proposes New Requirement That Workers Earn At Least $50,440 Per Year To Qualify For White Collar Exemptions

Jul 01, 2015

Categories:

Publications

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On June 30, 2015, the U.S. Department of Labor (DOL) released its long awaited proposed rule changes to the "white-collar" overtime exemptions under the Fair Labor Standards Act (FLSA). Although the DOL previously indicated they would simplify the FLSA's often difficult to administer "duties test," the DOL so far has left that test untouched. Instead, the DOL proposes to raise the salary level at which an employee can qualify for a "white-collar" exemption from overtime pay requirements from $23,660 per year to an estimated $50,440 per year. The DOL predicts this will change the exempt status of 4.6 million workers who are currently exempt from overtime requirements to non-exempt status – requiring the payment of overtime. The proposed rule still needs to undergo a public comment period before it can be implemented as a final rule.

The FLSA generally requires employers to pay their non-exempt employees an overtime rate of time and one half their regulate rate for hours worked in excess of 40 in a workweek. The FLSA, however, exempts certain employees from these overtime requirements, including exemptions for executive, administrative and professional employees, the so-called "white-collar" exemptions. With some exceptions, employees currently must be paid a guaranteed salary of at least $455 per week ($23,660 per year) to satisfy the "white collar" exemptions and their job duties primarily must involve executive, administrative or professional duties as defined by the regulations. Over the last several years, employers have faced significant litigation over whether their exempt employees satisfied the "duties test" of the "white collar" exemptions and were truly exempt. Indeed, a cottage industry of wage and hour class and collective actions now exists based, in part, upon questions over the "duties test."

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On March 13, 2014, President Obama issued a Presidential Memorandum directing the DOL to update the FLSA regulations to increase the number of workers who would be eligible for overtime pay. The Memorandum also promised to simplify the FLSA and make it easier for employers to determine whether their employees were truly exempt. This week, the DOL followed through on the first directive and punted on the second.

In its proposed regulations, the DOL more than doubles the "salary level test" and, as a threshold matter, requires workers to earn at least a salary equal to the 40th percentile of all full-time salaried workers. The DOL expects this minimum salary level to be $50,440 per year by the time the rule is formally implemented and automatically to rise every year thereafter to keep up with salary increases. The DOL also increased the minimum salary level needed to qualify for the highly compensated employee exemption from $100,000 per year to approximately $122,148 per year (e.g. 90th percentile of all full-time salaried workers). The DOL expects this will directly cost employers between $239.6 and $255.3 million per year to familiarize employers with the new rule, determine whether workers need an adjustment to their status and to adjust workers to a new status. The DOL additionally expects the rule to transfer income from employers to employees in the form of higher earnings at an average of about $1.2 and $1.3 billion per year.

Although the DOL was also directed to simplify FLSA regulations so that they would be easier for both workers and employers to understand and apply, the DOL has not proposed such simplifications. Instead, they have asked the public to provide their comments on how the "duties test" is currently working and to recommend suggestions for improving it.

While a final rule will not issue for several months, a momentous change appears to be on the horizon. Employers need to pay close attention to these developments as the drastic increase in salary levels proposed by the DOL will require many employers to revisit their employee's FLSA status and will likely lead to substantial increases in the cost of labor.

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Employers are encouraged to provide their comments to the proposed rule change during the public comment period. If you need assistance in preparing a comment, or would like more information on the DOL's proposed rule changes or any other aspect of wage and hour law, please contact Neal Shah, Ray Neusch or any other member of Frost Brown Todd's Labor and Employment practice group.

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