Department of Labor Proposes Changes to FLSA Overtime Exemption Regulations

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On June 30, 2015 the Department of Labor (DOL) issued a proposed rule which would update various provisions of the Fair Labor Standards Act (FLSA). These changes relate primarily to the "white-collar exemptions" to the mandates for overtime, which exempt executive, administrative and professional employees from the FLSA's minimum wage and overtime requirements.

First, and most significantly, a new salary threshold has been proposed. Currently, to be eligible for the white collar exemption, an employee must be paid at least $455 per week on a salary basis. Under the DOL's proposal, this would be raised to the 40th percentile of weekly earnings for full time salaried workers, which for 2016 is forecasted to be $970 per week ($50,440 annually). The DOL has proposed to recalculate the 40th percentile threshold each year, allowing for an annual increase. The amount would be published 60 days prior to becoming effective. Also, for the highly compensated exemption, the DOL proposed to increase the minimum annual compensation to the 90th percentile of weekly earnings for full time salaried workers ($122,148).

The DOL is also considering a number of other changes, for example, whether nondiscretionary bonuses should be included when evaluating the salary requirement. The DOL is also considering changing the duties test, which determines whether a position qualifies for a white-collar exemption based on its primary job duties.

What You Need To Know

This proposed rule significantly increases the salary requirements for many positions that currently are exempt from the FLSA under a white-collar exemption. The DOL has requested comments on the proposed rule, allowing a 60-day comment period, which began on

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July 6, 2015 and end on September 4, 2015. If the rule is passed, you should reevaluate positions that currently are exempt based on a white-collar exemption. Consult with your attorney at Frost Brown Todd to evaluate how the proposed rule affects your district.

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