New Proposed Overtime Rule Announced

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On March 7, 2019, the Department of Labor ("DOL") announced that it is proposing an increase to the salary threshold of the Fair Labor Standards Act ("FLSA") overtime regulations. The proposed regulation will require all employers subject to the FLSA to pay their "white collar" exempt employees at least $679 per week ($35,308 per year) in order to maintain their exempt status. This is an increase from the current threshold of $455 per week ($23,660 per year). The proposed regulation will also revise the salary threshold for the highly compensated employee exemption from $100,000 per year to $147,414 per year.

Employers may recall that the DOL previously adopted regulations scheduled to take effect at the end of 2016 that would have more than doubled the overtime threshold to $913 per week ($47,476 per year). However, a court struck down those regulations just nine days before they were scheduled to take effect. Following that decision and the change in administration in 2017, the DOL restarted the rulemaking process. The result is the newly proposed threshold of $679 per week.

Under the current proposal, employers may use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10 percent of the standard salary level. Unlike its previous iteration, the current proposal does not contain any automatic adjustments to the salary threshold moving forward. Rather, it only states a commitment to periodically review and update the salary threshold, subject to rulemaking and notice requirements.

Notably, the DOL has not proposed any changes to the job duties test to determine an employee's exempt status. The proposed rules have been submitted for public comment. Once they are published, the public will have 60 days to provide feedback.