Proposed FLSA Overtime Exemption Rule Changes

On Monday, July 6, 2015, in response to a March 2014 executive order signed by President Obama, the Department of Labor (“Department”) published a [Notice of Proposed Rulemaking (“NPRM”)](http://www.gpo.gov/fdsys/search/pagedetails.action?granuleId=2015-15464&packageId=FR-2015-07-06&acCode=FR) that will more than double the minimum salary necessary for a worker to be classified as “exempt” from the Fair Labor Standards Act (“FLSA”) overtime regulations.  It is estimated that over 5 million, currently exempt, salaried employees will be affected by the increased salary threshold.

Under the current overtime rules, employers are required to pay all employees covered by the FLSA time-and-a-half for any hours they work in excess of 40 hours in a single workweek.  Certain executive, administrative, and professional workers (“white-collar workers” or “EAP workers”) are “exempt” from overtime if their job responsibilities satisfy the “duties test” and they earn more than $23,660 per year or $455 per week.

The proposed changes would more than double the minimum salary threshold for exempt workers, requiring compensation of $50,440 per year or $970 per week.  The proposed changes would also increase the annual salary threshold from $100,000 to $122,148 for exemption as a highly compensated employee.

Automatic updating of the standard salary levels.  The Department of Labor is also proposing adding indexing to the salary level base to ensure the salary threshold continues to adjust to the changes in the economny. The Department seeks comments on whether the Consumer Price Index (“CPI-U” – a commonly used economic indicator for measuring inflation) or a fixed percentile of wage earnings for full-time salaried workers should be applied to automatically update the standard salary thresholds.  In relation to the fixed percentile method, the standard salary level would be adjusted annually to the 40th percentile of weekly earnings for all full-time salaried workers based on information published by the Bureau of Labor Statistics.

Modifications to duties requirements for exempt workers.  Given the proposed changes to the salary thresholds, the Department requested comments on whether changes to the duties tests are also warranted.  Specifically, the Department seeks public comment on:

(1) what, if any, changes should be made to the duties tests;

(2) whether employees be required to spend a minimum amount of time performing work that is their primary duty in order to qualify for exemption – whether the Department should adopt California’s law (requiring that 50 percent of an employee’s time be spent exclusively on work that is the employee’s primary duty) as a model; and,

(3) whether the concurrent duties regulation for executive employees (allowing the performance of both exempt and nonexempt duties concurrently) is working appropriately.

The proposed rules are subject to a 60-day comment period, and any comments must be considered before the final rule is announced**. PLEASE MAKE YOUR VOICE HEARD NOW but no later than Sept. 4, 2015,** -- end of the comment period. You can comment at: [http://www.dol.gov/whd/overtime/nprm2015](http://www.dol.gov/whd/overtime/NPRM2015) (note: site takes a while to load – be patient)