

## July 2016 Publication of Final Rule: Overtime Exemptions for “White-Collar” Employees

In 2015, the Federal Department of Labor (“DOL”) announced proposed revisions to the Fair Labor Standards Act’s (“FLSA”) current overtime exemptions. The Final Rule will be published in the Federal Register in July 2016, with an effective date of 60 days later. The DOL’s “salary shift” will be the first major change to federal overtime exemptions since 2004, essentially doubling the current minimum salary requirements for employees to qualify for the executive, administrative, and professional exemptions of the FLSA (the “White-Collar Exemptions”).

Under the proposed revisions, the DOL seeks to update the salary level required to ensure that the FLSA’s intended overtime protections are fully implemented, and to simplify the identification of overtime-eligible employees. These proposed revisions will make White-Collar Exemptions easier for employers and workers to identify, understand, and apply.

### Background

Currently, the FLSA’s White-Collar Exemptions exclude certain executive, administrative, and professional employees from federal minimum wage and overtime requirements. The DOL’s regulations have generally required each of the following three tests to be met for one of the exemptions to apply:

- (i) The employee must be paid a predetermined, fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”);
- (ii) The amount of salary paid must meet a minimum specified amount, currently \$455 per week or \$23,660 annually (the “salary level test”); and
- (iii) The employee’s job duties must primarily involve executive, administrative, or professional duties as defined and provided by the DOL’s regulations (the “duties test”).

In addition, current FLSA regulations provide that highly compensated employees are exempt from the overtime pay requirement if they are paid a total annual salary of at least \$100,000 and if they customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in the standard tests for exemption.

## **Key Provisions of Proposed Rule**

The DOL's proposed rule sets forth three key changes to the current FLSA regulations. Specifically, DOL proposes to:

1. Set a new minimum salary level to qualify for the White-Collar Exemption salary-level test, which will be set at the 40<sup>th</sup> percentile of weekly earnings for full-time salaried workers. In fourth quarter 2015, the DOL Bureau of Labor Statistics calculated this amount as \$972 per week (\$50,544 annually).
2. Increase the total annual compensation requirement needed to exempt highly compensated employees to the 90<sup>th</sup> percentile of weekly earnings of full-time salaried workers. In fourth quarter 2015, the Bureau of Labor Statistics calculated this amount as \$134,004 annually.
3. Establish a means to automatically update the minimum salary and compensation level requirements for these exemptions at periodic intervals in the future.

## **Next Steps**

Employers should begin to review their payroll records now to determine which employees would no longer qualify as exempt from overtime due to the new salary requirements and to address potential increases in payroll costs from the proposed changes. The DOL estimates that approximately 4.6 million workers who are now classified as exempt under the current regulations will become eligible for overtime under the proposed regulation revisions. The DOL further estimates that the implementation of these revisions will result in total costs of \$240-\$250 million to employers.

As always, we are available to answer any questions you may have regarding the new rule.