

Trump DOL Announces Proposed New Overtime Salary Thresholds

MARCH 11, 2019

In a much anticipated move, the U.S. Department of Labor (DOL) last Thursday issued a proposed rule affecting overtime salary thresholds. The DOL intends to set the minimum salary required to qualify for certain “white collar” exemptions under the Fair Labor Standards Act (FLSA) at \$35,308 dollars per year—\$679 per week. The proposed rule would also set the minimum salary threshold for the “highly compensated employee” test at \$147,414 per year.

Background

To be exempt from overtime pay requirements under the FLSA, employees must generally be paid on a salary basis at or above a specified minimum weekly salary level and meet certain requirements related to their primary job duties. Since 2004, the minimum salary threshold for the primary “white collar exemptions”—the Executive, Administrative, and Professional (“EAP”) exemptions – has been set at \$23,660 per year (\$455 per week).

In 2016, the Obama DOL issued a final rule more than doubling that minimum salary threshold, to \$47,476 (\$913 per week). That rule met with fierce resistance from employer groups and certain states. In fact, a collection of business groups and 21 states challenged the 2016 rule in federal court in Texas and prevailed, resulting in the rule being nullified. Immediately after it appealed the Texas court’s ruling, in November 2017, the (now Trump) DOL asked the Court of Appeals to hold the appeal in abeyance “pending the outcome of new rulemaking.”

That outcome occurred March 7, when the DOL issued its proposed rule to replace the now-defunct Obama-era final rule. The new minimum salary threshold for the EAP exemptions (\$35,308) essentially splits the middle between existing law (\$23,660) and the Obama-era proposal (\$47,476). In this way it mollifies critics of the Obama-era rule that was considered too extreme by some, while providing a meaningful update to salary thresholds that had been set 15 years ago.

What Will Change if the Proposed Rule Becomes Final

We expect that the proposed rule will become final in a form substantially identical to the proposed rule. If it does, employers that have exempt employees earning less than \$35,308 on an annualized basis will need to choose

between raising salary levels for these employees or reclassifying them to overtime eligible status and devising ways to spread work in order to minimize or avoid payment of overtime pay. The DOL estimates that 1.1 million currently exempt employees earn at least \$23,660 per year but less than \$35,308, and thus would gain overtime eligibility without intervening action by their employers. The proposed rule will permit employers to incorporate certain nondiscretionary bonuses and incentive payments to count towards up to 10 percent of the new salary threshold.

Further, while the proposed rule eschewed the Obama-era rule's feature of triennial automatic raises to the salary thresholds, the proposed rule provides that the DOL will *propose* an update to the salary thresholds every four years—subject to notice-and-comment procedures—“to prevent the levels from becoming outdated.”

What Will Not Change if the Proposed Rule Becomes Final

The proposed rule does not purport to alter the duties tests for any of the exemptions. Further, because the proposed rule only applies to those exemptions that require a salary basis, the proposed rule does not impact other frequently-used exemptions, such as the outside sales exemption, and exemptions applicable to teachers, physicians, lawyers, and judges.

What's Next?

The proposed rule will now undergo a period of notice and comment under the procedures of the Administrative Procedure Act. The DOL estimates that the final rule will take effect January 2020. Employers with exempt employees earning less than \$35,308 per year should expect that these new salary thresholds will take effect at that time and should now begin outlining their strategies to meet these new requirements if and when they do.

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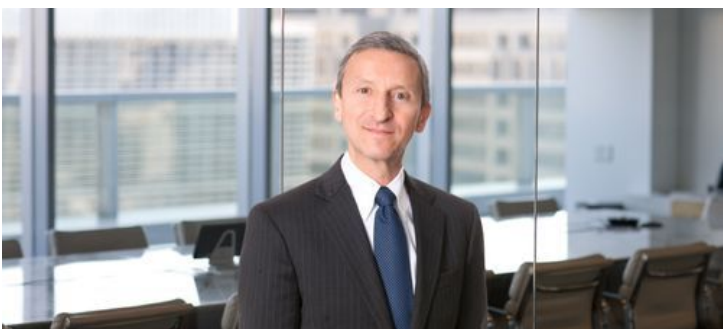
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