

## DOL Issues Notice of Proposed Rule Making on Overtime Exemptions

JUNE 30, 2015

The U.S. Department of Labor (DOL) has issued a highly anticipated and lengthy Notice of Proposed Rule Making (NPRM) to update the regulations defining and limiting the exemptions for “white collar” employees. According to the DOL, the NPRM would broaden federal overtime pay regulations to cover nearly five million more people by raising the minimum salary threshold required to qualify for the Fair Labor Standards Act’s (FLSA) “white collar” exemptions.

While the FLSA provides most workers with guarantees of a minimum wage and overtime pay at a rate of not less than one and one-half times the employee’s regular rate for hours worked over 40 in a workweek, there are several exemptions. The DOL’s NPRM proposes to update and to revise the regulations implementing the “white collar” exemptions from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and must generally be paid on a salary basis at not less than a specified minimum amount.

The current standard salary level, last updated in 2004, required for exemption is \$455 per week (\$23,660 for a full-year worker). The NPRM calls for raising that salary level to equal the 40th percentile of weekly earnings for full-time, salaried workers, bringing it to a projected level of \$970 per week, or \$50,440 annually, in 2016. The DOL also proposes to update the requirement needed to exempt highly compensated employees to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers (raising the minimum amount from \$100,000 to \$122,148 annually). Finally, the DOL seeks to establish a mechanism for automatically updating the salary and compensation levels going forward.

Additionally, while not proposing specific regulatory changes to the standard “duties tests,” the DOL discusses the current standard duties tests and solicits comments on whether the tests are working as intended to screen out employees who are not bona fide exempt employees. Notably, the DOL seeks comments regarding whether it should look to 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 in revising the duties test. The DOL similarly seeks comments on the possibility of including nondiscretionary bonuses to satisfy a portion of the standard salary requirement.

The NPRM follows a March 2014 memorandum from President Obama directing the Labor Secretary to “modernize and streamline” the regulations on exemptions from the FLSA’s minimum wage and overtime pay requirements. See

our client briefing, [President Obama Issues Memorandum Directing Labor Secretary to Revise Overtime Regulations](#).

The NPRM was sent to the White House Office of Management and Budget in May for review and approval, although it has not yet been published in the Federal register. When published, interested parties will be invited to submit written comments at [www.regulations.gov](http://www.regulations.gov).

The nearly 300 page NPRM is available [here](#), a fact sheet is available [here](#), and frequently asked questions are available [here](#).

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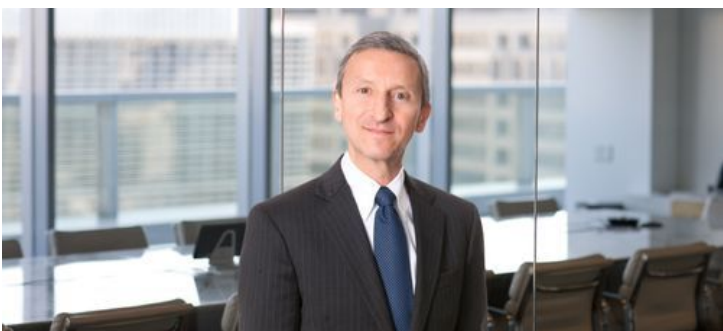
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