

## DOL Proposes Changes To Overtime Rules-Again

The Trump Administration's Department of Labor has released proposed rules that would significantly change the overtime exemptions under the Fair Labor Standards Act (FLSA). The FLSA requires employers to pay covered employees overtime at one and one-half times the regular rate of pay for all hours worked in excess of 40 per week. To be exempt an employee must (1) be paid on a salary basis higher than the threshold and (2) meet specified duties complying with the regulations. The proposed change increases the threshold for the salary basis test. Thus, regardless of the employee's duties, if they do not make at least as much as the threshold, they are eligible for overtime.

Under the proposed regulations, the salary-level threshold for administrative, executive or professional exemptions (the most popular ones) would increase from \$23,660 per year to \$35,308 per year. This could result in more than a million currently exempt workers becoming nonexempt, and eligible for overtime pay. The threshold for the more lenient "highly compensated employee" would increase from \$100,000 to \$147,414 per year. The proposed regulations provide that employers can use nondiscretionary bonuses, including commissions, up to 10% annually, to meet the thresholds in certain circumstances.

Employers may be experiencing déjà vu in hearing this news. The Obama administration previously proposed sweeping changes to overtime rules in 2016, that would have raised the "white collar" threshold even higher, to \$47,476, and called for automatic raises in the future. Those changes were blocked at the last minute by an injunction. The new changes are not only more modest than the Obama proposal, but do not include automatic increases.

**Comment:** What happens now? The proposed rule is not the law yet. The DOL's action starts the 60 day time period for the public to comment. That being said, these changes, or something very similar, are likely and will severely impact employer pay practices and budgets. Moreover, the increased press and discussion can also lead to employees (and plaintiff's attorneys) taking a closer look at pay practices. Organizations are encouraged to evaluate pay practices and employee classification to see how they will be affected by the new regulations, particularly if you did not do so in anticipation of the Obama Administration proposal. As always, we are here to help.

For more information, please contact Julie Kinkopf at [jkinkopf@wglaw.com](mailto:jkinkopf@wglaw.com) or 215.972.7914.