



The Good, the Bad, and the Ugly – The Department of Labor Releases Its Proposed Update to the White-Collar Regulations

You may recall our previous [alert](#) regarding President Obama’s March 2014 memorandum that instructed the Labor Secretary to “modernize and streamline” the regulations on exemptions from the Fair Labor Standards Act’s (FLSA) minimum wage and overtime pay requirements and warning you about imminent changes. Today, the Department of Labor (DOL) finally released the details of the long-awaited proposed rule on these exemptions under the FLSA. This proposed rule may impact your ability to classify your workers as exempt from minimum wage and overtime.

The FLSA currently contains certain “white-collar” exemptions, which exclude certain executive, administrative, professional, and other employees from the minimum-wage and overtime-pay requirements. To be exempt, these employees must meet certain tests based on primary job duties and payment on a salary basis. To meet the salary test, the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed, and the salary must meet a minimum threshold—currently \$455 per week or \$23,660 per year. And certain highly compensated employees, those paid at least the minimum salary and whose total compensation is at least \$100,000 annually, satisfy the exemption based on the regular performance of at least one exempt duty.

So, which news do you want first?

The Ugly News

The proposed rule would more than double the minimum weekly salary required to qualify for these exemptions. The threshold would rise to \$970 per week—or \$50,440 annually—in 2016 (which is when the salary increase would be expected) and automatically increase in future years. And, for those classified as exempt under the highly compensated employee exemption, the annual minimum compensation will also increase to more than \$125,000 annually.

The Bad News

The current changes only address the numbers—the minimum thresholds for certain exemptions. They do not address the primary duties tests also required for exemption. The DOL is considering whether to revise the duties tests, which will be yet another opportunity to shrink the universe of workers who may be considered exempt.

The Good News

The changes are only “proposed” at this point and will go through a public comment period, after which they may be adjusted before taking effect. That means you have some time to determine what the impact will be to your workforce and to consult your labor counsel in evaluating your options. This also is a good time to have your labor counsel evaluate your wage and hour practices overall and identify any other issues you may have so that you can make any necessary changes at once.

For further information, please contact [Sidney F. Lewis](#) or [Mary Margaret LeBato](#).

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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