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U.S. Department of Labor Announces Proposed Rule to Extend Overtime Protections

On Wednesday, August 30, the U.S. Department of Labor announced a proposal to revise the regulations relating to the white-collar exemptions from overtime and minimum wage under the Fair Labor Standards Act (FLSA). In the Notice of Proposed Rulemaking (NPRM), the DOL proposed increasing the standard salary threshold and the highly compensated employee total annual compensation threshold for those exempt under the white collar exemptions, as well as providing an automatic updating mechanism for the thresholds.[1]

The proposed new rule would increase the standard salary level from $684 to $1,059 per week, which equates to $55,068 annually for a full-year worker. This is more than a 50% increase. The proposals would also increase the highly compensated employee total annual compensation threshold from $107,432 to $143,988. The DOL stated in the NPRM that the proposed rule would result in overtime pay for an estimated 3.6 million additional workers.

The NPRM also proposes automatically updating the salary threshold every three years to reflect current earnings data. Every three years, the DOL will publish a notice in the Federal Register and on the Wage and Hour Division's (WHD) website at least 150 days before the date of the update of the standard salary level and the highly compensated employee total annual compensation requirement. The 150 days' notice serves to provide employers with sufficient time to make any necessary adjustments.

The DOL is also proposing to increase the salary threshold in U.S territories, which have not been changed since 2004. The standard salary level will apply to employees in all territories that are subject to the federal minimum wage – Puerto

Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands (CNMI) – but will maintain a special salary level only for employees in American Samoa, as that territory remains subject to special minimum wage rates.

The DOL is not proposing any changes to the standard duties test requirements for the white-collar exemptions in this rulemaking.

Upon publication in the Federal Register, the NPRM will be open for public comment for 60 days. The 60-day proposed effective date is shorter than the effective dates for the 2004, 2016, and 2019 rules, which were between 90 and 180 days. The DOL will consider all comments received before publishing a final rule.

Some groups have signaled an intention to challenge the proposed rulemaking through litigation, which will likely follow.

Key Takeaways

Employers may wish to begin preparing for the proposed new rule and should consult with counsel to determine their next steps.

This blog was drafted by Toni Ojoyeyi, an attorney in the Spencer Fane Minneapolis, Minnesota office. For more information, visit www.spencerfane.com.

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[1] *See* 29 CFR Part 541, RIN 1235-AA39 (Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees); *see also* DOL News Release (August 30, 2023).