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The U.S. DOL Unveils
New Proposed Overtime Rule

By Sarah R. Johnson

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On Thursday, March 7, 2019, after months of speculation from the business community, the United States Department of Labor ("DOL") announced a Notice of Proposed Rulemaking, proposing to amend the overtime pay exemption requirements under the Fair Labor Standards Act ("FLSA"). The new proposed rule updates the salary level required for exemption from overtime pay of time-and-a-half for all hours worked over 40 in a workweek to $679 per week or $35,308 annually. Under the current rule, the salary threshold is set at $455 per week or $23,660 annually.

<u>What is new?</u>

- Obama-era proposal in 2016 set the minimum salary necessary to qualify as an exempt executive, administrative, professional or computer employee at $913 per week or $47,476 annually (more than **<u>double</u>** the current threshold of $455 per week), and provided that the salary threshold would be automatically updated every three years.
    o This proposal was blocked by a federal Judge in 2017.
- The current proposal raises the salary level required for exemption to a threshold below that of the Obama-era proposal in 2016 and does not include automatic adjustments over time to the salary threshold.
    o The DOL is requesting comments on whether and how the salary threshold and other overtime requirements may be updated every four years.
- The current proposal does not update the "duties test"
- According to the DOL, the proposed salary threshold increase would expand overtime eligibility to more than one million additional U.S. workers.

- Once published in the Federal Register in the next few days, the DOL's Notice of Proposed Rulemaking will be subject to a 60-day public comment period.

<u>What Should You Do to Comply?</u>

Although this proposed rule from the DOL is not final and legal battles are predicted to ensue once again against the proposed changes to the rule, we recommend employers begin preparing for implementation of revised overtime requirements, as set out below:

- Adopt protocols to ensure that nonexempt salaried employees are paid overtime at the proper rate.
  - Revise Employee Handbooks and policies relating to overtime and time keeping.
  - Implement time clock system.
  - Travel time incurred by newly reclassified employees should be analyzed to assess whether and to what extent that time should be considered compensable time and if adjustments to travel schedules should be implemented.
- Evaluate telecommuting and other alternative work arrangements to determine whether compensable time can be realistically managed and tracked from remote locations.
- Remind employees about when they are permitted and not permitted to engage in work-related activities outside of scheduled work hours.
  - i.e. employees checking and responding to work-related emails and texts outside of their normal work hours.
- Analyze whether nonexempt salaried employees should be converted to an hourly pay basis.
  - Pros: tracking and paying overtime will be easily facilitated.
  - Cons: may be viewed by the affected employees as a demotion.
- Analyze whether the fluctuating workweek approach is beneficial, which can result in a substantial reduction in overtime pay costs.
- Analyze whether the size of the payroll should be reduced.
- Analyze whether the compensation of employees should be reduced.
- Analyze whether bonuses should be reduced or future compensation increases should be eliminated or reduced.

Please contact the employment law attorneys at Holifield Janich Rachal Ferrera, PLLC for further guidance on this issue.