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U.S. Department of Labor Proposed Rule: Employees Earning Less than $35,308 to be Eligible for Overtime

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Rachel D. Gebaide

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The U.S. Department of Labor (DOL) issued a Notice of Proposed Rulemaking to increase the minimum salary for certain "white-collar" administrative, professional, and executive employees to be classified as "exempt" salaried employees and, therefore, ineligible to receive overtime pay. The proposed new salary basis is **$35,308/year ($679/week)**.

Under the current rule, in effect since 2004, the Fair Labor Standards Act (FLSA) provides that certain employees are exempt from the FLSA's overtime pay requirements based on their job duties; provided that the employees are paid on a salary basis of not less than $23,660/year ($455/week). In 2016, the DOL implemented a final rule to increase the salary basis to $47,476/year ($913/week). The rule was struck down by a federal court on the eve of its effective date.

As a result of the 2019 proposed rule, employers should begin to evaluate job positions and compensation and determine whether to convert affected currently exempt employees to non-exempt status or to increase salaries to meet the new minimum salary if and when the new rule is final.

Newly non-exempt employees, e.g., those earning between $23,660/year ($455/week) and $35,308/year ($679/week), who work more than 40 hours in a given work week will be entitled to overtime pay. Employers will need to closely monitor and manage not only hours worked but the morale of the reclassified employees who may feel that their reclassification as non-exempt hourly employees (and the requisite tracking of time) diminishes their stature within and value to the company. Of course, employers will continue to have an affirmative legal duty to maintain accurate time records for all non-exempt employees, including any employees who are being reclassified as non-exempt as a result of the new rule.

The 2019 proposed rule includes a commitment for the DOL to review periodically the salary threshold for future updates but, unlike the 2016 rule, does not provide for automatic adjustments. Significantly, the rule addresses only the salary basis for the overtime exemption and does not change the job duties test, which is a critical component of the exemption.

The anticipated rule change gives all employers an opportunity to review existing exempt positions and correct any possible misclassifications based on job duties.

The 2019 proposed rule is subject to a 60 day public comment period. The public may submit comments about the proposed rule electronically at www.regulations.gov, in the rulemaking docket RIN 1235-AA20. After the comment period closes, the DOL will issue a final rule, which will include the effective date of the rule.

Lowndes will continue to provide timely updates on this important issue.