

## > Client Alert

### U.S. Department of Labor Issues Proposed Rule to Expand Overtime Eligibility

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On September 7, 2023, the U.S. Department of Labor (DOL) published a proposed rule to increase the minimum salary threshold for overtime eligibility under the Fair Labor Standards Act (FLSA). The proposed rule changes include an increase of approximately \$20,000 to the required annual salary threshold for white-collar exemptions from the requirement to pay overtime compensation where applicable. The new proposed rule is likely to have significant consequences as such a substantial increase in the minimum salary threshold will greatly expand FLSA overtime eligibility for many workers throughout the country in jurisdictions where applicable law has not already increased the salary threshold for exemptions from overtime compensation. Interested members of the public have until November 7, 2023 to submit comment on the proposed rule. As such, the proposed rule has yet to be finalized.

As a reminder, the FLSA requires that employees generally be paid at a rate of one and a half times their regular hourly rate of pay for all hours worked over 40 in any workweek. However, the FLSA provides exemptions to its overtime requirements for certain employees—generally those working in executive, administrative and professional capacities. To be classified as exempt from overtime under the FLSA, employees must both meet a job duties test and be paid on a salary basis at or above the minimum salary threshold. While the DOL's proposed rule does not propose to implement any changes to any of the job duties tests, the minimum salary threshold that many employees will now be required to receive in order to lawfully be considered for exempt status is \$1,059 per week, or \$55,068 annualized. As noted, this is a significant jump from the current minimum salary threshold of \$684 per week, or \$35,568 annualized.

In addition to the above-referenced exemptions, the FLSA also provides an overtime exemption for highly compensated employees for which the minimum salary threshold will increase from \$107,432 to \$143,988 annually under the proposed rule. The job duties test associated with the highly compensated employee exemption is less stringent, requiring only one attribute of the job duties tests in place for the executive, administrative and professional exemptions.

The DOL's new proposed rule also puts in place a proposed mechanism for continuing increases in its current update to the minimum salary threshold

to be implemented every three years based on then current nationwide earnings data.

New York employers and those in other jurisdictions which have already implemented increases in minimum salary thresholds from those currently in place on the federal level may not be affected by the proposed rule or may have to deal with relatively minimal increases in such thresholds from those currently in place locally. By way of example, the current minimum salary thresholds for the executive and administrative overtime exemptions are (i) \$1,125 per week, or \$58,500 annualized, in New York City and Nassau, Suffolk, and Westchester counties and (ii) \$1,064.25 per week, or \$55,341 annualized, in the remainder of New York State.

Regardless of each employer's business location(s), all employers should familiarize themselves with the new proposed rule and keep apprised of any developments as and when these rule changes are finalized and implemented by the DOL. Employers will, of course, want to consider how the proposed rule interacts with other applicable state and local wage and hour laws and make any adjustments accordingly. Employers will also want to consider examining their employee classifications and pay practices to understand potential changes needed for compliance before the proposed rule takes effect. Employers will want to keep in mind that job titles and salaries alone do not determine an employee's classification as exempt or nonexempt under the FLSA, so a diligent and ongoing examination of each potential exempt employee's satisfaction of necessary job duties tests is important, as is consulting legal counsel before the proposed rule takes effect.

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Our Labor & Employment Law team is available to help employers navigate wage and hour compliance issues under the FLSA and related state and local regulations and guidance, and to provide counseling and assistance in addressing potential classification and reclassification issues as appropriate.