

Client Alert

U.S. Department of Labor Issues Proposed Rule Changes to FLSA Overtime Exemption Requirements

July 16, 2015 – The U.S. Department of Labor (“DOL”) issued a proposed rule earlier this month that would increase the minimum salary requirements for employees to qualify as exempt from entitlement to overtime pay under the Fair Labor Standards Act (“FLSA”). The current FLSA regulations — last updated in 2004 — set the minimum weekly salary requirements to qualify for the executive, administrative or professional exemption (also known as the “white collar” exemptions) at \$455 per week or \$23,660 annually. [Under applicable provisions of the New York Labor Law, those employed by New York employers must be paid at least \$656.25 per week (or \$34,125 annually) to qualify for the white collar exemption under current New York Labor Law.] The above minimum salary requirements are merely threshold amounts — those who earn at or above these minimum amounts on an annualized basis must still have their job duties and responsibilities evaluated under published standards to determine whether they will be deemed “exempt” from FLSA or state law overtime requirements on the basis of their “white collar” exemptions. Current DOL regulations also exempt “highly compensated employees” (“HCE”) from the FLSA overtime requirements so long as the employee earns a minimum salary of \$100,000 per year. The HCE exemption permits employers to classify employees as exempt from overtime eligibility without having to evaluate the duties and responsibilities of a particular job as is required for the white collar exemptions.

Proposed Rule Changes

The DOL’s proposed rule seeks to implement the following changes:

- Raise the minimum threshold salary to qualify for the white collar exemption — subject to the evaluation of their job duties and responsibilities — to \$970 week (\$50,440 per year). This increase more than doubles the current minimum salary required for exempt status under the FLSA and marks a substantial increase from the current white collar exemption amount under the New York Labor Law.
- Increase the minimum annual salary for HCE to \$122,148.
- Automatically raise the minimum salary thresholds (further) on a yearly basis to ensure that the regulations do not become outdated.

What Employers Need to Know

At present, the foregoing suggested changes are merely proposed changes by the DOL to the existing regulations. Such proposal first must be published in the Federal Register and then will be subject to a comment period of sixty days. Following this comment period, the DOL will publish a “Final Rule” — either in the currently proposed form or in a modified form, based on the substance of comments received from interested parties — which will likely become effective sometime in 2016. In the meantime, employers should begin to conduct their own internal audits to determine how these proposed changes will impact their workforces. Specifically, employers should evaluate the compensation of all employees — especially those classified as exempt under the white collar exemptions or HCE exemption. To the extent currently exempt employees will earn less than what will be required under the DOL’s new proposed minimums, employers will be required to decide whether to increase salaries above the new thresholds or reclassify such employees as non-exempt, and subject to overtime compensation, with all of the attendant modifications required with respect to hourly, overtime eligible employees.

If you require any additional information about your payroll policies, or any other employment-related issue, please contact:

Jeffrey P. Englander
(212) 735-8720

jenglander@morrisoncohen.com

Keith A. Markel
(212) 735-8736

kmarkel@morrisoncohen.com

Evan S. Lupion
(212) 735-8853

elupion@morrisoncohen.com