Department of Labor Proposes FLSA Regulations to Increase the Salary Threshold for Exempt Employees

By Dave Robinson on July 24, 2015

On June 30, 2015, the U.S. Department of Labor announced its proposed revised regulations related to the Fair Labor Standard Act's "white collar" exemptions, which apply to executive, administrative, professional, outside sales and computer employees. These long-awaited revisions are in response to President Obama's March 2014 Memorandum directing the DOL to "modernize and streamline" the regulations on exemptions from overtime requirements. The DOL expects that its revisions would extend overtime protections to almost 5 million white collar workers in the first year.

In order for an employee to qualify for a white collar exemption, his or her salary and job duties must satisfy certain threshold criteria. The current salary threshold, last updated in 2004, is $455 per week (or $23,660 per year). The proposed changes would more than double the current threshold by indexing the salary level to the 40th percentile of earnings for full-time salaried workers. The DOL projects that by 2016, when the revisions would go into effect, the new salary threshold would be increased to $970 per week (or $50,440 per year). The DOL also proposes to increase the salary threshold for "highly-compensated" employees from $100,000 per year to $122,148 by indexing the salary level to the 90th percentile of earnings for full-time salaried workers. These salary thresholds will automatically update on an annual basis to prevent the levels from becoming outdated.

Of note, the DOL has not made any specific proposals to change the required duties to qualify for the white collar exemptions. Instead, the DOL has asked for comments on questions concerning whether any changes should be made. The DOL is also considering whether to allow nondiscretionary bonuses to satisfy some portion of the salary requirement. The comment period for these and any other matters pertaining to the DOL's proposed revisions began on July 6, 2015 and will close on September 4, 2015.

Although the Final Rules will not take effect until 2016, Employers should review what changes these regulations will make to the classification of their exempt employees. Inevitably, employers will likely need to reclassify some employees to nonexempt or drastically increase their salary in order to meet the threshold requirements. Recognizing ahead of time which employee class(es) will change will be vital for employers to control or eliminate increased costs going forward.

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