Insights: Alerts

DOL Proposes Increase to Threshold for the "White Collar" Overtime Exemption

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Last week, the Department of Labor ("the Department") released proposed rules to increase the minimum salary threshold for the so-called "white collar" exemption under the FLSA to $35,308 annualized ($679 per week). The exemption, which applies to executive, administrative, professional, outside sales, and computer employees, exempts those employees from overtime compensation. If implemented, the new rule would likely go into effect in 2020 and would replace current salary threshold of $23,660 annualized ($455 per week), which has been in effect since 2004. Under the Obama administration, the Department had proposed increasing the salary level to $47,475 ($913), but that proposal was enjoined in federal court and never went into effect.

Additionally, the new proposal raises the annual compensation for "highly compensated employees" from $100,000 to $147,414. This figure is based on average compensation for the 90th percentile of all salaried employees, calculated as of the proposed implementation date. Highly-compensated employees must still perform exempt duties for the exemption to apply, but those duties remain unchanged under the new proposals.

Under the proposal, employers would be allowed to use nondiscretionary compensation, like bonuses, incentives, and commissions, to account for up to 10% of the employee's overall compensation to meet the new income thresholds. This nondiscretionary compensation may be paid annually or more frequently, a shift from the Obama-era proposal that required such amounts to be paid at least quarterly.

The Department estimates that these increases will result in approximately 1 million workers becoming eligible for overtime who were not previously eligible. Many employers took steps to comply with the earlier Obama-era proposal and, for those employers, this increase will not require any adjustments. For other employers, however, this increase could require some adjustments to compensation or exempt status. All employers are encouraged to review or audit the compensation of their white-collar employees to identify those who may be affected by the new proposals (i.e., those who earn more than $455 per week but less than $679). Employers should identify affected employees and consider whether they wish to raise their salary to the new level, limit their working hours, or reclassify them as non-exempt.

Attorneys on the Labor & Employment team at Kilpatrick Townsend are prepared to answer any questions regarding this new proposal and help employers ensure continued compliance with the law. Feel free to contact any of the attorneys named in this Alert or any Kilpatrick Townsend attorney with whom you regularly work.

Related People

Susan W. Pangborn

t 404.815.6305

spangborn@ktslaw.com

S. Wesley Butler

t 214.922.7160

wbutler@ktslaw.com

Diane L. Prucino

t 404.815.6479

dprucino@ktslaw.com

John W. Alden

t 404.815.6058

jalden@ktslaw.com