Insights: Alerts

DOL Releases Proposed Changes to White-Collar Exemption Rules Estimated to Affect Five Million Employees

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Currently, an employee can be classified as an executive, administrative, professional, or computer professional employee exempt from the minimum wage and overtime requirements of the federal Fair Labor Standards Act ("FLSA") if the employee's job duties satisfy certain standards (the "duties tests") and the employee earns at least $455 per week, or $23,660 annually, on a salary basis. Employees who earn at least $100,000 annually and perform certain job duties can also be classified as exempt under the "highly compensated employee" exemption. These exemptions are among the so-called "white collar" exemptions to the FLSA's minimum wage and overtime provisions. On June 30, 2015, the Department of Labor ("DOL") released a proposal to revise the rules defining these exemptions. Generally, the DOL's proposed rules more than double the minimum salary an employee must earn annually to qualify for certain white-collar exemptions and, if implemented, would entitle approximately five million additional workers to overtime pay.

The DOL's Proposed Revisions to the White-Collar Exemption Rules

Under the DOL's proposed rules, an employee must earn on a salary basis an amount equal to the 40th percentile of earnings for full-time salaried workers to qualify for the executive, administrative, professional, or computer professional exemptions. The DOL projects this amount will be $970 per week, or $50,440 annually, when the proposed rule could go into effect. The minimum compensation for employees to qualify for the "highly compensated employee" exemption would similarly increase to the 90th percentile of earnings for full-time salaried workers, estimated to be approximately $122,000 annually. Finally, the DOL also proposes to include a mechanism for automatically updating the minimum salary requirements periodically to prevent them from becoming outdated between rulemakings and requests comments on what that mechanism should be.

Notably, the proposed rules do not include revisions to the white-collar exemptions' duties tests. Instead, the DOL has asked the public to comment on whether changes to the duties tests are needed. The DOL has also asked for comments on whether nondiscretionary bonuses and incentive payments should be counted as a portion of an employee's salary for the purpose of qualifying for a white-collar exemption. Currently, such payments are not counted to determine if an employee earns the minimum salary, unless the employee is a "highly compensated employee."

Practical Implications

Employers should keep in mind that what the DOL announced on June 30 is merely a proposed rule change. The public has 60 days to comment on the proposed rules, and the DOL could revise the proposed rules before they take effect. Any final rule changes affecting the white-collar exemptions are not expected to go into effect until 2016.

Although the DOL proposal does not require any immediate action, employers would be wise to begin considering how the changes proposed by the DOL would affect their employees. If the proposed exempt salary and compensation tests are implemented, currently exempt employees who do not satisfy those tests would have to be given pay increases to remain exempt employees. However, if those employees work relatively little overtime, it may be more financially advantageous to keep them at their current compensation levels, reclassify them as nonexempt employees, and pay them overtime compensation when they do work more than 40 hours in a workweek. Employees reclassified as nonexempt may need training and guidance on recording their working hours and employer-specific rules regarding overtime work, and if they will continue to be paid on a salary basis, the employer must clearly communicate to them how their overtime compensation will be calculated. Employers should bear in mind that some employees place great value on being classified as exempt, so reclassifying currently exempt employees as nonexempt may create morale issues.

If currently exempt employees work more than 40 hours in a week on a regular basis and increasing their compensation to keep them in exempt status upon implementation of the salary and compensation tests discussed in the proposed rules would not be fiscally reasonable, employers should begin analyzing whether the weekly work of those employees could be completed in 40 hours by reassigning or outsourcing certain duties or by making adjustments to staffing.

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