U.S. Department of Labor Seeks to Expand Overtime Protections

BY TRACY THOMAS BOLAND AND CHELSIE A. VOKES • AUGUST 30, 2023

On August 30, 2023, the United States Department of Labor ("DOL") issued a proposed rule that would significantly expand the number of employees who are entitled to overtime pay. The DOL also issued a Q&A to answer questions about the proposed rule.

As a reminder, the federal Fair Labor Standards Act ("FLSA") generally entitles employees to time and a half pay for working more than 40 hours in a workweek. Employees are exempted from this general rule if they meet all three of the following: (1) they receive a salary, (2) they make more than a specified salary cap, and (3) they work in a "bona fide executive, administrative, or professional capacity" (the "EAP Exemption"). A second exemption exists for employees who are "highly compensated" (the "HCE Exemption"). Like the EAP Exemption, the HCE Exemption similarly requires that exempt employees receive a salary, that they meet a salary cap, and that they perform specified duties; however, the salary cap is higher and the duties requirement is more limited.

If finalized, the proposed rule would impact both the EAP and the HCE Exemptions by:

- Increasing the salary cap for the EAP Exemption to $1,059 per week ($55,068 annually). The current salary cap is $684 per week ($35,568 annually).
- Increasing the salary cap for the HCE Exemption to $143,988 annually. The current cap is $107,432 annually.
- Automatically updating the salary cap every three years.

The proposed regulations would also apply the EAP Exemption's salary cap to Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands (where it does not currently apply) and increase the salary cap for employees in American Samoa and the motion picture industry.

If finalized, this rule would significantly expand the number of employees entitled to receive overtime. Once the proposal is officially published in the Federal Register, the public will have 60 days to submit input on the potential

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changes before the rule is finalized.

CLIENT TIP

Employers should consider providing input on the proposed rule. They should look for updates on the proposed rule and, if it is finalized, employers should review their payroll practices to ensure employees it classifies as exempt will meet the new salary threshold. In addition, auditing the duties performed by exempt employees to ensure that they satisfy the FLSA's duties test would be a good practice. Bowditch will keep you updated on developments as they unfold.

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