

# Electronic Alert

Volume 22, Issue 4

March 11, 2019

## **DOL Issues a Notice of Proposed Rulemaking on New Minimum Salary Threshold for Overtime**

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The Department of Labor (DOL) has issued a Notice of Proposed Rulemaking that would increase the minimum salary for exempt workers to \$35,308. The DOL represents that this change would increase the number of workers eligible for overtime by over 1 million.

Recall that, in general, all employees must be paid time and one-half their regular rate for all hours worked over 40 hours in a workweek unless they fall within one of the Fair Labor Standards Act exemptions. The exemptions apply to executive, administrative, professional, outside sales, or computer employees, if their jobs meet certain requirements that relate to their primary job duties. In addition to the job duties test, to be exempt, most of these employees must also be paid on a salary basis and at a minimum salary level.

What the proposed rule does:

- Increases the minimum salary threshold required for an employee to be considered for an exemption from \$23,660 to \$35,308 annually. This is an increase from \$455 per week to \$679 per week.
- Increases the minimum salary threshold for Highly Compensated Employees from \$100,000 to \$147,414 annually.
- Suggests that going forward, it will be the DOL's intention to propose updates to the salary threshold every four years.

What the proposed rule will not do:

- Change the job duties test.
- Implement a provision requiring automatic adjustments to the salary threshold.

What can employers do?

- Remember: the proposed rule has not been published in the Federal Register. Once published, a notice and comment period will follow before any rule is final and enforceable. Further, as you might remember when we covered the DOL's 2016 Rule increasing the overtime salary threshold, any final rule will be subject to challenge through litigation.
- Take note: the proposed rule does not change the job duties test. Employers can start to take stock of which employees this rule would effect by looking at their current salary and comparing it to the new threshold without having to reconsider whether an employee's job duties will now render them nonexempt.
- Be on the lookout: we will keep you updated as further information develops on this topic and once the final rule is published.

For questions on overtime and how employers can prepare for proposed rulemaking, please contact Gabrielle Hansen at [ghansen@barran.com](mailto:ghansen@barran.com) or (503) 276-2112.