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U.S. Department of Labor Issues Notice of Proposed Rulemaking to Update Overtime Regulations

Earlier this month, the U.S. Department of Labor issued a proposed overtime regulation that, if enacted, would result in more than a million workers no longer being exempt from overtime.

Under the current law, the Fair Labor Standards Act's so-called white collar overtime exemptions set the minimum salary threshold at \$455 per week (\$23,660 annually). The DOL's proposal would raise the threshold to \$679 per week (equivalent to \$35,308 per year). The DOL also proposed raising the total annual compensation requirement for highly compensated employees, which are subject to a minimal duties test, from \$100,000 to \$147,414. Notably, in both instances, employers would be allowed to use nondiscretionary bonuses and incentive payments (including commissions) that are paid annually or more frequently to satisfy up to 10 percent of the standard salary level. Finally, the DOL contemplates regular increases to the salary threshold every four years, although such increases would still be subject to the public comment process.

You may recall that the Obama administration attempted to significantly raise the overtime threshold in 2016 to \$913 per week (\$47,476 annually) with automatic regular increases thereafter. However, that regulation was quickly blocked in the federal court system so the planned increase never went into effect. A similar effort to block the DOL's latest proposal is less likely since the proposal is more modest than the 2016 revision and does not feature automatic increases to the salary threshold.

The opportunity for public comment on the proposed regulation is now underway and will close on May 21, 2019. Following this comment period, it is expected that the proposal will be rolled out as is or perhaps subject to certain modifications. We will continue to report on the latest developments as they happen.

In the meantime, employers should begin both financial and logistical planning for the implementation of these rules. This proposal also serves as a good reminder to review and revisit your current classifications of employees and the effect that the proposed regulation could have on those classifications. Remember that the "salary test" is just one component of the popular white collar exemptions, and it is critical to frequently examine whether employees truly meet the exemptions' job duties components. More information about the proposed rule is available at www.dol.gov/whd/overtime2019.



If you have any questions or would like additional information about how these proposed regulations could impact your business,

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