

Changes to Minimum Wage and Overtime Exemptions Expected by July 2016

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The **United States Department of Labor (DOL)** is preparing to make dramatic changes to certain exemptions from federal minimum wage and overtime requirements. DOL proposes to update the regulations governing which executive, administrative, and professional employees (commonly referred to as white collar workers) are entitled to the **Fair Labor Standards Act's** minimum wage and overtime pay protections by:

- Setting the minimum salary level required for exemption for full-time salaried workers at \$970 per week, or \$50,440 annually (an increase from the current \$455 per week, or \$23,660 annually)
- Increasing the total annual compensation required to exempt highly compensated employees to \$122,148 annually (from the current \$100,000 annually); and
- Establishing a mechanism for automatically updating the salary and compensation levels going forward to ensure that they will continue to provide a useful and effective test for exemption.

DOL last updated these regulations in 2004, at which point it set the minimum weekly salary for these exemptions at not less than \$455 per week. DOL has also discussed changing the “duties” tests for some exemptions but has only recently requested comments on whether the tests should be revised.

The proposed changes were published in the Federal Register on July 6, 2015, followed by a 60-day comment period, which closed on September 4, 2015. DOL received nearly 300,000 comments on these proposed changes. Despite recent comments from the Solicitor of Labor, M. Patricia Smith, indicating the changes would not be published until “late 2016,” it now appears DOL will publish them by the middle of next year. Once the final rules are published, employers will only have 60 days to comply.

Although the final text of the exemption rules and their implementation date is not yet known, prudent employers should begin preparing for these changes now. Employers should evaluate their current exempt employee positions and timekeeping systems, and then estimate the increased payroll costs

from the proposed rule changes. Employers should then determine whether to increase salaries for these positions to at least \$50,440, or to instead reclassify employees as nonexempt and either ensure those employees will not need to work overtime hours or pay overtime wages as they are earned.

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