



Dolan • Caldwell • Bergers • Fitzpatrick • Benjamin LLC

Department of Labor Proposes New Salary Minimums for White Collar Overtime Exemptions

By Michael A. Caldwell

The U.S. Department of Labor (DOL) has proposed new regulations under the Fair Labor Standards Act (FLSA) that will dramatically increase the number of employees who must be paid overtime. Up until now, employees who earned a “genuine salary” \$455.00 per week (or \$23,660.00 per year) could qualify as exempt if their primary job functions fell within certain narrowly-defined specifications.

While they do not alter the functional definitions, the DOL's proposed regulations dramatically increase the minimum annual salary threshold to qualify an employee for exempt status to \$50,440.00 (that is \$970 per week). This will result in many employees who previously were classified as “exempt” from overtime to be re-classified as “non-exempt” employees who therefore must be paid overtime premium pay (150% of their “regular hourly wage rate) for all hours that they work in each pay period that exceed the 40 hour “maximum hours” provisions of the Fair Labor Standards Act. (For “first responders” working in public police and fire departments the hourly threshold begins after 171 hours or 212 hours respectively for police and fire fighters, if the employer adopts the 27 day pay period permitted for such employees under the FLSA and its Regulations.) The DOL is also considering whether non-discretionary bonuses and incentive payments should be included in determining whether the employee meets the new salary threshold for the exemption.

The proposed regulations also increase the highly compensated employee minimum salary threshold from \$100,000.00 to \$122,148.00 to ensure those employees meet every other requirement for the “highly compensated employee” exemption test.

To prevent the new salary levels from becoming outdated, the Department is proposing to include an automatic annual update to the salary and compensation thresholds using either a fixed percentile of wages or the Consumer Price Index for urban consumers.

The DOL did not alter the various job duties required for the "white collar" exemptions. Instead, it is seeking comment as to whether the tests are working.

In its statement, the DOL admitted the proposed rulemaking will "transfer income from employers to employees in the form of higher earnings." (Hardly surprising, considering.)

We believe these new regulations significantly change the classification landscape for exempt employees and will require all employers to review and revise their employee classifications in order to remain compliant with the FLSA.

We highly recommend all employers audit their current employees’ “exemptions” in light of these changes. Our firm’s FLSA Audit Team has conducted numerous FLSA audits and is familiar with the revised regulations. They can determine whether your current exemption classifications meet the new salary basis requirements, and we will work with you to comply with the new regulations. We can also offer outlines for training sessions for formerly salaried employees to emphasize their new obligations to clock in and out so that the employer can maintain accurate records of their hours worked.

Click [here](#) to read the DOL's proposed regulation.