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DOL Overtime Rule Update: Breaking News!

March 8, 2019

Today the Department of Labor (DOL) announced a Notice of Proposed Rulemaking (NPRM) that would substantially increase the number of workers eligible for overtime. Most significantly, the DOL has recommended the salary threshold for workers required to be paid overtime be raised from \$455 a week (\$23,660 annually) to \$679 a week (\$35,308 annually).

The DOL most recently attempted to raise the salary threshold, which was set in 2004, in 2016. As was discussed in our previous legal update titled [DOL Overtime Rule Update](#), on May 17, 2016, the DOL announced its rule expanding overtime protection for employees, which raised the salary threshold from \$455 a week to \$913 a week (\$47,476 annually). Prior to the rule going into effect on December 1, 2016, however, two lawsuits were filed by opponents of the change (including the state of Wisconsin) in the U.S. District Court for the Eastern District of Texas. These lawsuits resulted in the DOL being prohibited from implementing the 2016 rule. The court's decision is currently on appeal before the U.S. Court of Appeals for the Fifth Circuit.

In addition to the increase in the minimum salary threshold, the NPRM includes:

- An increase in the total annual compensation requirement for “highly compensated employees” (HCE) from the currently-enforced level of \$100,000 to \$147,414 per year;
- A commitment to periodically review and update the salary threshold; and
- An allowance for employers 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.

The NPRM does not make any changes to the job duties test element to the overtime exemption analysis and does not contain automatic adjustments to the salary threshold.

For a more detailed discussion of the DOL's rulemaking process and what is required for the NPRM to be implemented by the DOL, please see our legal update related to the 2016 change: [What is the Overtime Proposal and Why Should I Care?](#)

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