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New Overtime Rules Propose \$35k Salary Requirement

Yesterday the U.S. Department of Labor, Wage and Hour Division (“WHD”) issued its highly anticipated and long-awaited proposed rules for certain positions classified as exempt from minimum wage and overtime requirements under the federal Fair Labor Standards Act (“FLSA”) (“2019 Overtime Rules”).

The 2019 Overtime Rules propose a salary threshold of \$679 per week, with an annual salary of \$35,308, for “white collar” exempt positions under the FLSA. This marks an increase from the existing salary threshold of \$455 per week, or \$23,660 annually, which was established in 2004. According to the WHD, the 2019 Overtime Rules will make more than a million workers eligible for overtime, who were previously classified as exempt from overtime under the FLSA.

In proposing these changes, the WHD is communicating a more moderate and business-friendly approach to adjusting the salary level than that of the prior administration. The overtime rules issued by the WHD in 2016 during President Obama’s administration sought to increase the minimum salary threshold to \$47,476, which was more than double the current salary threshold. The 2016 rules were blocked by an injunction from a U.S. District Court just days before they were to take effect. That ruling was appealed to the Fifth Circuit Court of Appeals but the WHD under President Trump’s administration eventually determined it would not seek to reinstate the high salary threshold proposed by the Obama administration.

In addition to an increase in the amount paid to exempt employees, the 2019 Overtime Rules permit employers to include up to 10% of certain nondiscretionary bonuses, paid at least annually, and incentive payments, including commissions, when determining whether an employee’s salary meets the threshold.

Additionally, the 2019 Overtime Rules also propose an increase to the salary threshold for “highly compensated employees” from \$100,000 to \$147,414. Finally, the 2019 Overtime Rules propose public comments be submitted every four years to address future updates to the salary threshold.

There are no proposed changes to the standard duties tests for the exemptions under the 2019 Overtime Rules.

Comments on the 2019 Overtime Rules are due 60 days after publication in the federal register. If the rules are finalized, the WHD is predicting they will go into effect in or around January 2020.

Proper classifications remain an area of focus for the WHD and employers should take this opportunity to assess how the 2019 Overtime Rules will impact exempt positions within their organization or business.

Additional Information

If you have any questions or need assistance in evaluating your exemptions under the new 2019 Overtime Rules, please contact your Kutak Rock attorney or other member of our [National Wage and Hour Practice](#).

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