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U.S. Department of Labor Proposes Increases to Exempt Salary Thresholds

On August 30, the United States Department of Labor (DOL) issued a Notice of Proposed Rulemaking (NPRM) that proposed increases to the salary thresholds for the executive, administrative, professional and highly compensated employee exemptions under the Fair Labor Standards Act (FLSA). The proposal also includes a mechanism which would automatically update those salary thresholds periodically going forward.

Exemptions Under the FLSA

The FLSA requires covered employers to pay employees minimum wage and overtime for hours worked in excess of 40 hours a week unless an exemption applies. The most common exemptions are for employees who are employed in a bona fide executive, administrative or professional capacity. In order to be properly classified as exempt under one of the executive, administrative or professional exemptions, employees must perform certain duties and be paid on a salary basis that meets certain statutory minimums.

Proposed Changes to the Exempt Salary Thresholds

Currently, the salary threshold for the executive, administrative and professional exemptions is $684 per week ($35,568 per year). The revised regulations would establish the salary threshold for the executive, administrative and professional exemptions at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (currently the South Region), which according to the DOL is $1,059 per week ($55,068 per year). The salary threshold for the highly compensated employee exemption would increase from $107,432 to $143,988 annually.

Proposed Automatic Updates to the Exempt Salary Thresholds

The DOL also proposed automatic updates to the salary thresholds for the executive, administrative and professional exemptions every three years so that they align with the 35th percentile of weekly earnings of full-time, non-hourly workers in the lowest-wage Census Region (and the 85th percentile of full-time, non-hourly workers nationally for the highly compensated employee exemption).

What's Next?

The NPRM was in the public comment period until November 7. During that period, the DOL received more than 26,000 comments. The proposed rule faced scrutiny during a November 29 hearing before the members of the House Subcommittee on Workforce Protections. The testimony before the subcommittee noted that the proposed increase to the salary thresholds is inconsistent with the more modest prior increase in 2019, when the salary threshold for the executive, administrative and professional exemptions increased from $455 per week ($23,660 per year) to the current threshold of $684 per week ($35,568 per year), and the salary threshold for highly compensated employees increased from $100,000 per year to the current threshold of $107,432 per year.

The subcommittee's criticism could foreshadow that this proposed rule will suffer a similar fate as the DOL's 2017 proposal, which was ultimately struck down by a federal district court in Texas before the DOL abandoned it.

Employers should continue to monitor this proposed rule as it winds its way through the rulemaking process. If adopted, the proposed changes to the exempt salary thresholds will be significant and require employers to review their employee classifications to ensure that employees classified as exempt still qualify based on their current earnings given the new higher salary thresholds.

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