

Proposal Could Increase Paid Overtime Regulations

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Earlier this month, the Department of Labor issued a Notice of Proposed Rulemaking (*NPRM*) that proposes to increase the salary eligibility threshold under which workers will be entitled to receive overtime pay. Since 2004, employees who earn a salary less than \$455 per week or \$23,660 annually must be paid overtime for each hour they work in excess of forty in a work week. Employees who earn at least this salary level may be ineligible to receive overtime pay depending upon the job duties they perform.

During President Obama's administration, the Department of Labor enacted revised regulations that would have raised the salary threshold to \$913 per week or \$47,476 annually. In late 2016, however, a federal court in Texas enjoined the regulations from taking effect. Since then, those court proceedings have been suspended, pending further rulemaking and a revised salary threshold.

The *NPRM* includes a proposal that will increase the minimum salary threshold for an employee to be exempt from the Fair Labor Standards Act's (*FLSA*) overtime requirement. When the *NPRM* is published as a final rule, the current \$455 weekly salary threshold will increase to \$679 per week (an annual salary equivalent of \$35,308). Employees who earn a salary less than \$679 per week will not be eligible for an overtime exemption, and employers will be required to pay those employees overtime pay and the overtime premium that the *FLSA* mandates. The Department of Labor estimates this salary threshold increase will entitle more than one million workers to overtime pay.

Another important provision of the *NPRM* includes an increase of the annual compensation requirement for certain employees to qualify as highly compensated employees. Currently, a highly compensated employee can be exempt from the *FLSA*'s overtime requirement if he or she earns \$100,000 annually and satisfies a job duties requirement. But the *NPRM* would raise this annual compensation threshold to \$147,414. The *NPRM* also restricts an employer's present ability to include nondiscretionary bonuses and incentive payments into the highly compensated employee's annual compensation requirement.

Employers should identify the employees they have classified as being exempt from the *FLSA*'s overtime requirements who earn less than a \$679 weekly salary or \$35,308 annual salary. These employees will be ineligible to receive overtime when the final rule takes effect. Additionally, employers should take this opportunity to review the job duties their employees actually perform to ensure the employer has classified his or her employees properly and, thus, reduce the possibility of being the target of employee misclassification claims, which can become costly, as employees can recover liquidated damages in an amount equal to the unpaid overtime and attorney's fees.