

# DOL Announces Long-Awaited Proposed OT Rule

## Labor & Employment Law Update

By Sara Zorich on March 11, 2019

As a follow up to our March 4<sup>th</sup> blog, three days later the DOL announced a proposed OT rule increasing the minimum salary required for an employee to qualify for exemption from federal overtime pay requirements. The proposed increase in salary level is from \$455 per week (\$23,660 annually) to \$679 per week (\$35,308 annually). In addition, the proposed rule includes the following changes:

- The proposal increases the total annual compensation requirement for “highly compensated employees” from the currently-enforced level of \$100,000 to \$147,414 per year (note, this overtime exemption is not applicable in Illinois as it was not adopted by the Illinois Minimum Wage Law);
- A commitment to periodic review to update the salary threshold, but not an automatic adjustment as was the case with the 2016 proposed rule. Updates would continue to require notice-and-comment rulemaking;
- A special salary level for Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands, a separate special salary level for American Samoa and an updated special weekly “base rate” for the motion picture producing industry; and
- Allowing 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, which was also part of the 2016 proposed rule. (Note, the proposed rule would allow a one-time yearly catch up payment if the employee does not earn the anticipated bonuses. The proposed rule states that as long as an employer pays 90% of the standard level (\$611.10) and if at the end of the 52-week period the salary paid plus the nondiscretionary bonuses and incentive payments (including commissions) paid does not equal the standard salary level for 52 weeks (\$35,308), the employer would have one pay period to make up for the shortfall (up to 10 percent of the standard salary level, \$3,530.80).)

There were no changes to overtime protections for police officers, firefighters, paramedics or nurses. There were also no changes impacting laborers including non-management production-line or non-management employees in maintenance, construction and related occupations.

Most notably, the proposed rule stayed away from any changes to the job duties test. We anticipate legal challenges to the proposed rule may be lodged by both the business community and employee rights groups as this rulemaking is a significant change from the current law and a deviation from the 2016 proposed rule. Employers will have 60 days to submit comments to the DOL. Once the comments are considered, the DOL will issue and publish a final rule. In light of the proposed rule, we encourage employers to begin examining how it might impact them. This includes review of applicable state law as employers are required to comply with whichever law is most favorable to employees. We will be available to address any concerns or questions you may have. And as always, we will keep an eye on any other developments and will keep you updated.

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