

US DOL Changes to Exempt Salary Status on the Horizon – Are you ready?

Labor & Employment Law Update

By Sara Zorich on September 17, 2019

The United States Department of Labor (DOL) is expected to implement its proposal to amend the minimum salary requirements for exempt employees under the Fair Labor Standards Act (FLSA) no later than the end of 2019. As you may recall, a similar proposal was set for 2016 but was not implemented due to a court injunction. Under the FLSA, the current minimum salary threshold for exempt employees is \$455/week (\$23,660 annually) which is anticipated to increase under the DOL's proposal to \$679/week (\$35,308 annually). Note, state law requirements may be more generous than the FLSA and employers must follow the law that is most beneficial to the employee.

While you may be having déjà vu from 2016 and think “been there, done that,” it is still important to review your current exempt employee pay mechanisms in light of the potential changes and analyze the following:

- How many of your current employees will be impacted by this new rule?
- Is a salary increase for those who do not currently meet the salary requirement a plausible financial decision to the required increases?
- Are there job positions that should now be reclassified as non-exempt and the employees will now be entitled to overtime if they work over 40 hours?
- Tightening up policies regarding working overtime and working with management to limit the number of overtime hours worked for non-exempt employees.
- Reviewing job descriptions.
- Reviewing handbooks and policies regarding exempt and non-exempt status.
- Reviewing benefits applicable to exempt and non-exempt employees and how a change in status may impact the benefits to your employees.

Employers have options:

- Increase the employee's salary to that proposed in the new regulations so they continue to meet the exemption;
- Keep the salary the same and pay the required overtime payments based on the employee's regular rate of pay;

- Reduce the employee's salary or change the employee to hourly at a lower rate so the total earnings do not change after overtime is paid;
- Eliminate the employee working any overtime hours; or
- Some combination of the above options.

Employers should begin analyzing their exempt workforce now so they are prepared when the DOL changes are implemented.

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