

## **Employment Law Bulletin: Millions of White Collar Workers to be Eligible for Overtime Under Newly Proposed Department of Labor Rule**

The United States Department of Labor (“DOL”) has announced a proposed rule change that would extend overtime protections to nearly 5 million white collar workers by more than doubling the salary threshold for an employee to qualify for an exemption from minimum wage and overtime pay from \$23,660 to \$50,440 annually.

The Fair Labor Standards Act (“FLSA”) generally requires covered employers to pay their employees at least the federal minimum wage (currently \$7.25 an hour and \$8.05 under Florida law) for all hours worked, and overtime premium pay of one and one-half times the employee’s regular rate of pay for all hours worked over 40 in a workweek. There are, however, several exemptions from the FLSA’s minimum wage and overtime requirements, including an exemption from both minimum wage and overtime protection for “any employee employed in a bona fide executive, administrative, or professional capacity ... or in the capacity of outside salesman ....”

Historically, the regulations implementing the white collar exemption have generally required each of three tests to be met for the exemption to apply: (1) the employee must be paid a predetermined and fixed salary; (2) the amount of salary paid must meet a minimum specified amount; and (3) the employee’s job duties must primarily involve executive, administrative, or professional duties as defined by federal regulations.

While the DOL has increased the salary level requirements of the exemption several times since 1938, under the current regulations, an executive, administrative, or professional employee must be paid at least \$455 per week (\$23,660 per year for a full-year worker). **Now, the DOL has proposed to increase the standard salary requirement to approximately \$970 per week (or \$50,440 annually for a full-year worker).**

If the rule change is implemented, the DOL estimates that 4.6 million currently exempt workers who earn at least \$455 per week but less than \$970 per week would, without some intervening action by their employers, become entitled to minimum wage and overtime protection under the FLSA. And, based upon this change, employers will have the obligation to track the hours worked of the newly non-exempt employees – among other previously unnecessary record keeping requirements.

In short, without making changes, employers of an estimated 4.6 million Americans could be subject to lawsuits seeking to recover minimum wage and overtime pay, liquidated damages, and attorneys’ fees and costs should the employers not adapt to the new exemption rules.

The proposed rule change recently concluded the DOL’s public comment period and it is likely to be implemented in 2016. Employers should begin reviewing their employees’ job functions, rates of pay and hours worked now to determine how the new rules, when implemented, will effect their payroll obligations to their employees.

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