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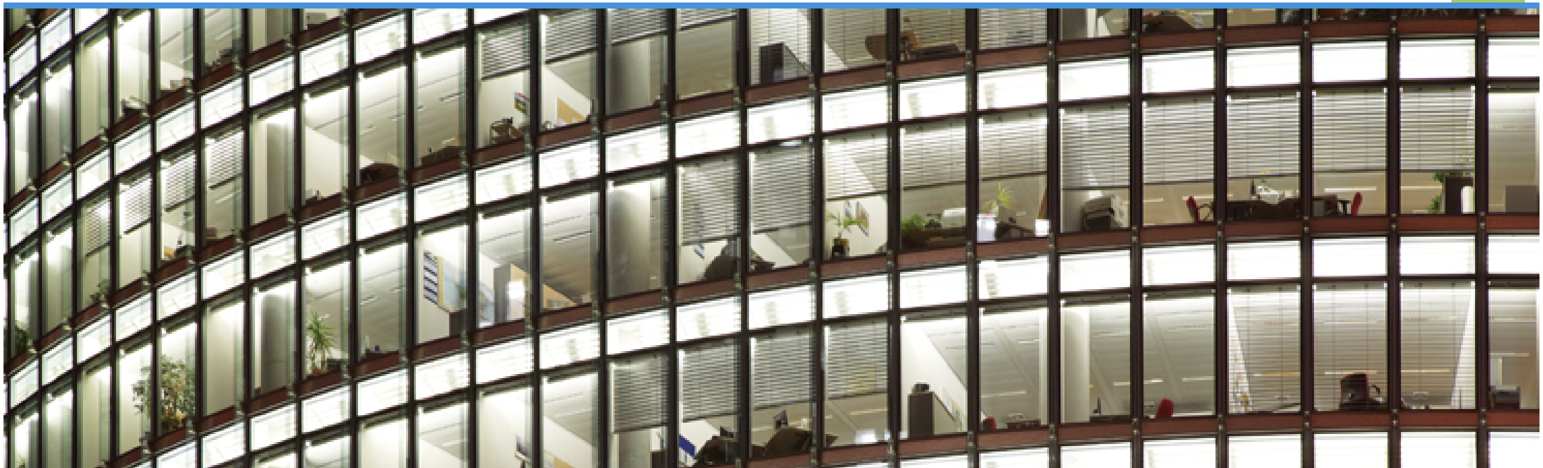

Labor & Employment | Alert

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DOL Proposes Dramatic Expansion to FLSA Overtime Protections

For the first time in a decade, the Department of Labor (DOL) proposed a rule to broaden federal overtime pay regulations under the Fair Labor Standards Act (FLSA). The proposed changes will affect an estimated 5 million Americans and their employers, making it more difficult to meet the overtime exemption.

The DOL proposed two primary changes to federal overtime pay regulations. Specifically, the DOL proposes to dramatically increase the minimum salary required to qualify for the FLSA exemptions from overtime pay (“white collar” exemptions). Additionally, it proposes to similarly increase the annual compensation requirement for “highly compensated employees” (HCE).

In order to meet the exemption, current regulations require exempt employees to satisfy a minimum salary requirement of $455 per week ($23,660 annually) and meet certain job duties tests.

On March 13, 2014, President Obama signed a Presidential Memorandum directing the DOL to update the regulations defining which exempt workers are protected by the FLSA’s minimum wage and overtime standards. The Presidential Memorandum specifically instructed the DOL to examine ways to modernize and simplify the regulations while fully implementing the FLSA’s intended overtime protections. The proposed rule followed in due course.

The newly proposed rule would increase the minimum salary requirement for exempt employees to a projected $970 per week ($50,400 annually) by 2016. The DOL also proposed automatic updating of the salary threshold to prevent it from becoming outdated between rulemakings. To date, the salary level has been updated only seven times since 1938. The DOL argues that this change will create certainty by eliminating drastic increases over time, though it will most certainly require employers to constantly reevaluate and adapt in response to the more frequent changes.

The DOL also proposed changes for the salary requirements to become exempted as a highly compensated employee. Specifically, the DOL raised the total annual compensation threshold from $100,000 to $122,148 for full-time salaried employees. The DOL estimates that this threshold represents the annualized value of the 90th percentile of weekly earnings of full-time salaried workers.

Significantly, the DOL did not propose changes to the duties element of the test at this time, as was previously expected. However, the DOL did still indicate a willingness to consider overhauling the duties tests, as well as perhaps going with a California-style objective measurement. Such a change in the duties tests could spawn widespread litigation as employers are forced to revamp their workforce to keep pace with the changing regulatory environment. Proving that employers spend at least 50 percent of their time on exempt duties could require entirely new and potentially onerous timekeeping systems.

The proposed rule will affect the workforce structure and bottom line of nearly every employer in America, particularly those in the retail and restaurant industries. Among other things, employers will want to closely review all exempt positions which fall below this increased salary threshold.

While the DOL has not yet published the proposed rule in the Federal Register, upon publication, interested parties will be invited to submit written comments on the proposed rule at www.regulations.gov. Only comments received during the comment period identified in the Federal Register published version will be considered part of the rulemaking record. Although some revision to the regulations appears inevitable, the rulemaking is just heating up and the rule is far from finalized. In fact, we recently hosted a seminar where the Executive Director of the U.S. Chamber of Commerce indicated that his organization and others would be actively opposing the expansion of the overtime laws. Other members of the business community and their representatives, both in Congress and elsewhere, are likely to voice strong opinions in the coming weeks. Stay tuned for further updates as the debate continues.

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