



update

Public Sector Benefits Compliance News

July 16, 2015

DOL Proposes Updated Rule on Overtime

On June 30, 2015, the Department of Labor (DOL) announced long-awaited proposed updates that would govern which white-collar workers are eligible for overtime pay under the Fair Labor Standards Act (FLSA).¹ The DOL has requested written comments on the proposed rule by September 4, 2015.²

After providing brief background on the FLSA's tests for determining which white-collar employees are exempt from overtime pay protections, this *Update* summarizes the key provisions of the proposed rule. It concludes with action items employers may want to consider.

Background on the FLSA's Tests

Under the FLSA, certain white-collar employees are exempt from overtime pay protections if they pass the following tests: The **salary basis test** stipulates that the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality of the work performed. The **salary level test** sets a minimum specified amount the employee's salary must meet or exceed. The **duties test** notes that the employee's job must primarily involve executive, administrative or professional (EAP) duties, as defined by the regulations. Highly compensated employees (HCEs) are also exempt if they earn at least a set amount (currently \$100,000) in total annual compensation.

Key Provisions of the Proposed Rule

The proposed rule is intended to modernize and simplify overtime requirements and ensure the FLSA's intended protections are fully implemented. To accomplish this, the DOL proposed the following:

- Set the standard amount for the salary level test at the 40th percentile of weekly earnings for full-time salaried workers, which is projected to be \$970 a week, or \$50,440 a year in 2016, when the proposed rule is expected to take effect.
- Establish a mechanism to automatically update the salary for the salary level test. This will involve maintaining the level at a fixed percentile of earnings or updating the amount based on changes in the Consumer Price Index for All Urban Consumers (CPI-U).
- Increase the total compensation requirement needed to exempt HCEs to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers (\$122,148 in 2013).



Regulatory Guidance:

- Background on the FLSA's Tests
- Key Provisions of the Proposed Rule
- Implications of the Proposed Rule
- Action Items

¹ The proposed rules were published in the [July 6, 2015 Federal Register](#).

² Comments can be submitted via www.regulations.gov.

Implications of the Proposed Rule

According to the DOL, the proposed rule would reduce the number of workers for whom employers must apply the duties test to determine exempt status. This will simplify the identification of overtime-protected and exempt employees, which will make the exemptions easier for employers and workers to understand.

The DOL believes the proposed rule would restore the effectiveness of the salary level test — which it considers the “best single test” of exempt status. Moreover, the proposed changes will help ensure the HCE exemption covers only employees who almost invariably meet all the other requirements for exemption.

The proposed rule is expected to extend overtime protections to nearly 5 million white-collar workers within the first year of its implementation. The DOL estimates that the proposed rule would transfer an average of \$1.2 to \$1.3 billion annually from employers to employees in the form of higher earnings. The average annualized direct employer costs — regulatory familiarization, adjustment and managerial costs — will total between \$239.6 and \$255.3 million per year (assuming a 7 percent discount rate).

Action Items

Although the DOL did not propose any modifications to the standard duties test, it is soliciting comments on whether the test is working as intended to screen out employees who are not *bona fide* EAP employees. In particular, the DOL is concerned that the current test may allow the exemption of employees who are performing such a disproportionate amount of nonexempt work that they are not EAP employees in any meaningful sense.

Employers may also want to:

- Assess their current workforce and positions to determine what employees will have eligibility changes,
- Estimate the potential payroll costs,
- Start to plan how to communicate the changes if they are introduced as proposed, and
- Establish an efficient and effective strategy for managing any additional costs and impacts as part of their longer-term workforce planning efforts.

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