

## Labor & Employment Alert

# Department of Labor Finalizing Federal Overtime Rule

August 23, 2019

On March 7, 2019, the United States Department of Labor (DOL) issued a proposed new rule that would significantly change the pay standards for overtime exemptions under the Fair Labor Standards Act (FLSA). The minimum salary necessary to qualify for the administrative, executive, or professional exemption under the FLSA has been \$455 per week (\$23,660 per year) since 2004. However, **under the proposed rule, the salary threshold will increase to \$679 per week (equivalent to \$35,308 annually), which would expand overtime eligibility to more than one million workers.** The proposed rule was sent to the White House for final review on August 12, 2019. We do not have a definitive implementation date, but expect it to be in place **on or before January 2020.**

This is not the first time efforts have been made to modify the salary threshold. In 2016, the Obama administration sought to increase the threshold to \$47,476 (\$913/week). However, that proposal was met with litigation that resulted in a nationwide injunction being issued. While that case was on appeal, the newly elected Republican administration withdrew the appeal, which left the injunction in place. Since that time, the industry has anticipated changes to the overtime rules, and the DOL began seeking comment on such changes in July 2017.

In addition to raising the minimum salary threshold, the proposed rule also proposes other changes, including raising the "highly compensated employee" exemption from \$100,000 to \$147,414. Currently, the FLSA applies a much less lenient exemption standard to employees earning \$100,000 or more annually. Other proposed changes in the rule include a commitment to reviewing and updating the threshold, and allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to ten percent of the standard salary level.

It is the DOL's intent that the new rule is put in place at the latest before the end of President Donald Trump's first term in office. However, given the history and controversy surrounding the proposed rule, we can expect litigation to ensue by worker advocates, who are likely to argue that the DOL violated the Administrative Procedure Act by weakening the prior administration's effort and denying more workers overtime pay. For now, employers should **engage in analysis to consider how their current compensation programs may be impacted** by the newly proposed salary threshold and make a plan for the effect of implementation on budgets for the upcoming year.

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