

U.S. DEPARTMENT OF LABOR ISSUES PROPOSED RULE AMENDING THE FLSA WHITE COLLAR EXEMPTIONS

Labor & Employment Alert
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The U.S. Department of Labor (DOL) has just released its long-awaited proposed rule that would amend the minimum wage and overtime exemptions applicable to executive, administrative, professional, and computer employees under the Fair Labor Standards Act (these exemptions are also known as the “white collar” exemptions). If adopted, the proposed rule would increase the minimum salary level for the executive, administrative, and professional exemptions from \$455 per week (\$23,660 per year) to a projected \$970 per week (\$50,440 per year). For New York employers, the current minimum salary level for most professional employees is \$455 per week (\$23,660 per year), and for administrative and executive employees it is \$656.25 per week (\$34,125 per year).

The proposed rule would also increase the minimum salary level for the “highly compensated” exemption. Currently, to qualify for this exemption, an employee must be paid at least \$100,000 per year. The proposed rule would raise the minimum salary level for these workers to \$122,148 per year.

Additionally, the DOL has proposed indexing these minimum salary levels to either wage growth or inflation, and adjusting them annually. The DOL is considering indexing the minimum salary level for executive, administrative, professional, and computer employees to the 40th percentile of earnings for full-time salaried workers, and to the 90th percentile for highly compensated employees. Alternatively, the DOL is considering indexing these minimum salary levels to the consumer price index for urban consumers (CPI-U).

The DOL is aiming to have these changes become effective in 2016. It estimates that, as a result of these changes, 4.68 million employees who are currently treated as overtime exempt will, without intervening action by their employers, become eligible for overtime pay in the first year the rule is in place.

Interestingly, the proposed rule does not seek to amend the duties tests applicable to the white collar exemptions. Instead, the DOL is seeking public comment on whether the duties tests are working as intended to screen out employees who it does not believe are bona fide exempt employees. The DOL expressed concern that, in some circumstances, the current duties tests allow employees to be classified as

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exempt where they are performing “a disproportionate amount” of nonexempt work.

The issuance of the proposed rule marks the beginning of the public comment period, which runs for 60 days after the proposed rule is published in the federal register. We expect the proposed rule to be published in the federal register in the coming days. During the comment period, interested parties will have the opportunity to submit comments regarding the proposed rule to the DOL for its consideration in formulating the final rule.

Please contact us if you have questions regarding the proposed rule or its potential impact, or if you would like to submit comments to the DOL.

We will be providing more information about these important changes to the wage-and-hour rules as they develop.