

# DEPARTMENT OF LABOR SET TO CHANGE OVERTIME EXEMPTION REGULATIONS UNDER THE FLSA



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On July 6th, the Department of Labor (“DOL”) issued a Notice of Proposed Rulemaking with the potential to affect an untold number of employers. The proposed rule, published in the Federal Register at 80 FR 38515, drastically changes the DOL’s interpretation of the Fair Labor Standards Act with respect to overtime exemptions. The current rule, put in place in 2004, exempts employees with salaries of at least \$455 a week (\$23,660 a year) and who perform executive, administrative, professional, outside sales and computer duties from overtime regulations. Those regulations require cap workweeks at 40 hours, with any excesses paid at one and one half the regular rate.

In a Presidential Memorandum in March of 2014, President Obama directed the DOL to update the overtime exemption regulations concerning both the salary requirements and job classifications. The

proposed rule would raise the salary exemption level to the 40th percentile of weekly earnings for full-time salaried workers as well as seek comment on how to change and adapt the “standard duties test” to determine which employees are eligible for the exemption. Using 2013 data, the salary exemption figure would be \$921 per week (\$47,892 per year). The DOL estimates that this figure will rise to \$970 a week by 2016, the likely first year of the final rule. In addition, Highly Compensated Employees (“HCE”) – those who make over \$100,000 a year but less than \$122, 148 – may be eligible for overtime if they meet the minimal HCE duties test but not a standard duties test.

The DOL estimates that 4.6 million workers and as many as 36,000 HCE workers will be newly qualified for overtime in the first year of this new rule, and the average annualized direct employer costs would total around a quarter of a billion dollars per year.

The comment period for the proposed rule ended on September 4, 2015, and a final rule will be issued sometime thereafter, taking effect 30-90 days from issuance. This means there is a high probability that the final rule will begin to effect employers as early as 2016, so employers should update their overtime policies and revisit employee classification as soon as possible to comply with the eventual rule.

