

**Major Changes to the FLSA will
soon alter the Salary Threshold
for Exempt Employees**

The U.S. Department of Labor (DOL) has proposed major changes to the overtime regulations of the Fair Labor Standards Act. The new regulations expand overtime eligibility for millions of workers by raising the salary threshold for the white-collar exemption. These changes have the potential to impact the exempt status of a wide range of positions in nearly every industry. **Employers take note:** the final rule is expected to issue soon, and will take effect 60 days after publication in the Federal Register – likely by the summer. While the exact content and scope of the final rule is unknown until publication, the following changes are predicted based upon the DOL’s proposed rule which was published last year:

➤ **The Salary Level for Overtime Exemption will Increase**

The current regulations set the salary threshold for white-collar workers who are exempt from overtime at \$455 weekly, or \$23,660 annually. The revised regulations will raise this salary level significantly, likely attaching it to the 40th percentile of earnings for full-time salaried workers in 2015. The DOL’s proposed rule raises the salary threshold to approximately \$970 weekly, or \$50,440 annually. Depending on the details of the final rule, all impacted exempt employees who earn less than the newly elevated salary level may be eligible for overtime pay unless their salaries are raised. At this time, there are no known proposed changes to the duties test for the white-collar exemption from overtime, whereby workers must primarily perform executive, administrative, or professional duties, as defined in the DOL regulations. However, the proposed rule did request public comments regarding the duties test. Depending on the decision on this aspect of the rule, a wide range of outcomes are possible.

➤ **The Salary Level for Highly Compensated Employees will Increase**

The highly compensated employee exemption is a lesser known exemption that applies to employees who earn at least \$100,000 annually and who “customarily and regularly” perform at least one of the exempt duties of an executive, administrative, or professional employee, and are not engaged in manual work. The proposed rule raises the salary threshold for this highly compensated employee exemption to \$122,148 per year, which is equal to the 90th percentile of earnings for full-time salaried workers based on data from 2013.

➤ **Automatic Updates to Minimum Salary Thresholds**

In addition to the base salary adjustments for overtime exemption listed above, the new regulations will likely include an automatic annual update to the minimum salary levels required for exemption, either based on percentiles of earnings for full-time salaried workers or based on changes in inflation. Moving forward, employers will have to remain updated with all changes to the minimum base salary levels for exemption.

Employers Should Act Now

Employers should begin to analyze and audit employee classifications and be ready to make changes, depending on the final rule’s requirements. Employers should review the salary levels of exempt employees to determine which positions will be affected by the regulatory changes. Employers must then begin to decide whether to meet the higher salary threshold, or reclassify impacted employees to non-exempt status, meaning hourly pay with the possibility of overtime for any hour worked over 40 hours in a work week. Employers should develop a communication strategy to inform affected employees of the changes as well as prepare any training necessary for new timekeeping protocols and/or the management of newly classified employees.