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NXP

DEPARTMENT OF LABOR PROPOSES CHANGES TO WHITE COLLAR OVERTIME PAY EXEMPTIONS

On July 6, 2015, the U.S. Department of Labor (DOL) formally proposed revisions to the executive, administrative, and professional (EAP) exemptions to the overtime pay requirement of the Fair Labor Standards Act. In addition, the Department requested comments on those proposed revisions and on other possible changes to the EAP exemptions and other white collar exemptions.

The DOL will receive comments until September 4, 2015. Then it will take some time to consider the comments before issuing final revised regulations, likely in early to mid-2016.

The DOL proposal focuses on increasing the minimum salary required to meet the salary level test for the EAP exemptions. It would more than double the minimum salary for these exemptions to \$921 per week, or \$47,892 annually. In addition, the minimum salary would be updated every year to keep it even with a fixed percentile of weekly earnings for full-time salaried workers or based on inflation. The Department noted it also is considering permitting employers to include some non-discretionary bonuses as part of an exempt employee's salary for purposes of meeting the minimum salary.

The proposed revisions would also increase the minimum salary for highly compensated employees by more than 20 percent, to \$122,148 annually; this minimum salary would also be adjusted yearly.

The DOL does not at this time propose to change the duties-related tests for exempt status. According to the Department, "A regularly updated salary level will assist in screening out employees who spend significant amounts of time on nonexempt duties and for who exempt work is not their primary duty." But the DOL did invite comments on whether the duties tests should be changed. In particular, it requested input on whether employees should be required to spend a minimum amount of time performing work that is their primary duty to qualify for an exemption.

Finally, the DOL stated that it is considering whether to include additional examples of how the regulations play out in specific occupations, including in computer-related fields.

The DOL's goal with the revisions is to enable many employees who have been classified as exempt to receive a pay raise or to be reclassified as non-exempt so they can receive overtime pay. Employers will want to consider what the proposed changes mean for their organizations and employees.

We will further explain the proposed changes to the overtime exemptions during our webinar on "FLSA and Wage Payment," on August 12, 2015, at 12 noon Eastern time. The webinar is part of our employment law certificate series. To register for the webinar, e-mail RSVP@nexsenpruet.com or contact Morgan Lewis at MLewis@nexsenpruet.com.

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