

Eye on Washington

Regulatory Update



DOL Releases Proposed New Overtime Rules

On March 7, 2019 the United States Department of Labor (DOL) released its proposal for establishing the amounts required to be earned by an employee in order for that employee to be exempt from the Fair Labor Standards Act (FLSA) overtime requirements. The DOL previously had issued final regulations modifying these FLSA overtime amounts in 2016, but the changes never became effective due to litigation challenging the DOL's actions. Now, the DOL has proposed new changes

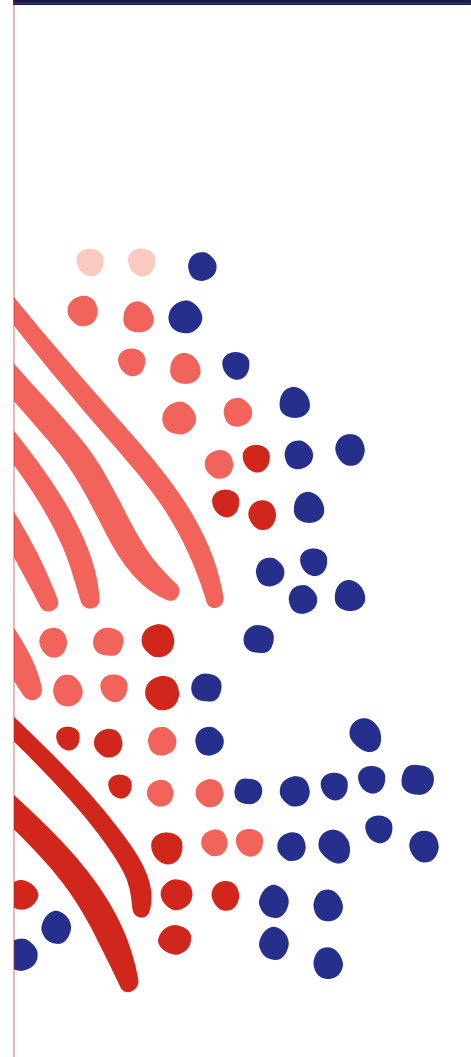
Background

On May 18, 2016, the DOL under the Obama administration released final regulations that modified certain provisions of the FLSA. Specifically, those final regulations increased the minimum salary required to be earned by an employee in order for that employee to be exempt from the FLSA overtime requirements from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). The prior levels had been in place since 2004. The final regulations also established a mechanism for automatically updating the salary and compensation levels every three years, starting on January 1, 2020.

Additionally, the final regulations increased the total annual compensation requirement for Highly Compensated Employees (HCEs), subject to a minimal duties test, to \$134,004 per year from the current threshold of \$100,000, which was also in place since 2004. Under the final regulations, an employee earning at least the required threshold is exempt from overtime if the employee customarily and regularly spends time on one or more exempt duties and the employee does not engage in manual work.

The changes to the FLSA were scheduled to go into effect on December 1, 2016, but several business groups and 21 states filed lawsuits against the DOL in federal Court (United States District Court, Eastern District of Texas, Sherman Division ("the Court")) challenging the FLSA changes. On October 12, 2016, the 21 states asked the Court for emergency preliminary injunctive relief and argued that the FLSA's overtime changes violate the U.S. Constitution by regulating the states and coercing them to adopt wage policy choices that adversely affect the states' priorities, budgets, and services. The Court agreed with the states and granted an injunction delaying the overtime rule scheduled to go into effect on December 1, 2016. The delay was temporary, while the case continued to be litigated and the Court determined whether the DOL had the authority to make the FLSA changes and whether the FLSA changes were valid. The delay applied to employers nationwide.

On August 31, 2017, the Court issued a final decision striking down the changes to the FLSA overtime rule originally scheduled to be effective December 1, 2016. Subsequently, the DOL under the Trump administration announced that it would ►



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release a proposal establishing a new threshold and began gathering public input in July 2017. The DOL proposal was released on March 7, 2019.

DOL March 2019 Proposal

Under the new proposal, the amounts required to be earned by an employee in order for that employee to be exempt from the FLSA overtime requirements will be \$679 per week (\$35,308 annually). This is an increase from the current level of \$455 per week (\$23,660 annually), but less than under the Obama administration rule which was \$913 per week (\$47,476 annually).

As under the Obama regulations, the DOL will permit employers to satisfy the new salary level requirement by using nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the salary level test.

The new salary level for a Highly Compensated Employee (HCE) will be \$147,414. The current level is \$100,000, and under Obama rules was \$134,004.

There is no change to the duties requirements to be considered exempt from FLSA overtime in addition to the required threshold.

There are no automatic increases to the salary thresholds, but the DOL proposes that the salary level will be revisited every four years. Under the Obama rules, a mechanism for automatically updating the salary and compensation levels every three years was established, starting on January 1, 2020.

The DOL has stated that it expects the new rule to be effective January 2020. A 60-day comments period will commence once the proposal is published in the Federal Register (expected to be during the week of March 11, 2019).

For a copy of the DOL proposal, click on the link provided below.

<http://src.bna.com/GeV>

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