CLIENT ALERTS & INSIGHTS

Labor Department Publishes Long-Awaited Overtime Pay Updates

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On Thursday, March 7th, the DOL published a proposed rule update to the federal law governing overtime pay that could affect thousands of workers and employers alike. The proposal would raise the salary threshold that employees must exceed before being considered exempt from overtime pay to over $35,000 per year.

The current salary threshold of $23,660 has been in place since 2004, and though the Obama administration proposed an increase to $47,476 back in 2016, that proposal was blocked and never took effect following a legal challenge. The Department's new proposed rule would formally rescind the 2016 proposal. Moreover, unlike the Obama-era proposal, the DOL's current proposal seeks public input on whether and how to periodically update overtime regulations.

Highlights of the proposed rule changes include:

- Increasing the salary threshold for overtime exemption from $23,660 ($455/week) to $35,308 ($679/week);
- Allowing the inclusion of certain nondiscretionary bonuses and incentive payments to count toward up to 10 percent of the salary threshold;
- Increasing the salary threshold for "highly compensated employees" from $100,000 to $147,414 (approximately $13,000 higher than previously proposed level);
- Increasing specified salary thresholds for employees in the motion picture industry and various discrete U.S. territories;[1] and
- Committing to propose updates to the earnings thresholds every four years.

The last of these points is particularly notable, because each proposed update would be followed by a comment period in which the public may provide feedback. Such regular dialogue would aid the Department in determining how best to implement future changes. As mentioned above, this proposal is unique in this regard, whereas the previous proposal would have established regular predetermined increases to the salary threshold without soliciting public feedback.

Another notable facet of this proposal is that the Department will not change the duties test that, coupled with the salary basis test, determines whether an employee is eligible to receive overtime pay. Some critics have called for a narrower duties test, limiting the types of duties that were exempt from overtime.The proposed rules changes are estimated to take effect in 2020; however, the

Obama-era proposal is still the subject of ongoing litigation and the new proposal is likely to face legal challenges of its own.

For more information about this proposed rule update, contact a member of the firm's Labor & Employment Practice Group.

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[1] These territories include Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.