

EMPLOYMENT LAW UPDATE

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DOL SET TO CHANGE FLSA OVERTIME REGULATIONS

The Department of Labor (“DOL”) will release a final rule later this year that will greatly reduce the number of employees who are exempt from the overtime requirements of the Fair Labor Standards Act (“FLSA”). Industry insiders indicate the DOL may release the final rule in July. Once released, employers will likely have only 60 days to comply with the new rule. Therefore, employers should take proactive measures now to analyze the potential effect to their organization and avoid litigation.

Generally, employees must satisfy a two-part test to be considered exempt: the duties test and the salary test. The new rule will change the salary test. Currently, the salary threshold for an exempt employee is \$455/week (\$23,660 annually). It is anticipated the DOL will increase that threshold to \$970/week (\$50,440 annually). The DOL will also include automatic annual updates to the salary test. This means any employee making under \$50,400, regardless of job duties, will be non-exempt. Those employees will be entitled to overtime pay for hours worked over 40 in a workweek and the employer will need to satisfy all record-keeping and other FLSA requirements for those employees.

The DOL may also change the duties test. Currently, an employee may qualify for the exemption if his/her primary duty involves exempt work (which varies based on the respective exemption). The amount of time involved in completing the work does not matter. Rather, the analysis is whether the exempt duty is the principal, main, major, or most important function of the position. Many now speculate the DOL will change this qualitative test to a more quantitative test, like the one used in California. If that is the case, an employee would only qualify for the exemption if he/she spends 50% or more of his/her time performing exempt duties. Such changes would increase the burdens on employers, because employers would then need to closely scrutinize *all* exempt employees, even those making over \$50,440, to ensure they satisfy the new duties test.

Regardless of what specific final changes the DOL makes, there are many steps you can take to help your organization smoothly transition. For instance, identify the full time, exempt employees whose salaries fall below the proposed new threshold and determine the possible cost of paying overtime versus raising salaries above the proposed threshold. Also, conduct a complete and thorough review of positions where there may be doubt or concern that employees earning a salary above the minimum threshold do not perform many exempt tasks. Also, ensure the proper tracking of all time worked for nonexempt employees. This could mean implementing a timekeeping system that reports actual hours worked every day. These are just a few potential starting points. If you have any questions about the proposed regulations or wage and hour laws, or if you need any other assistance in labor or employment law, please contact:

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