

**Labor & Employment Alert  
March 2019**

**U.S. Department of Labor Proposes [Again] Increasing  
Salary Minimum for Federal Overtime Exemption**

*For a discussion of these and other legal issues, please visit our website at [www.mhtl.com](http://www.mhtl.com)  
To receive legal updates via e-mail, contact [information@mhtl.com](mailto:information@mhtl.com).*

As you know from prior Client Alerts, in 2015 the U.S. Department of Labor (“DOL”) proposed, among other things, increasing the “salary level test” for exempt employees from the current \$455 per week (or \$23,660/year) to an indexed amount originally proposed at about \$970 per week (or \$50,440/year). The DOL also proposed increasing the “highly compensated employee” exemption from the current \$100,000 per year to an indexed amount originally proposed at about \$123,000 per year. After those changes were memorialized in a Final Rule, these proposed changes were challenged in court and essentially abandoned by DOL after the 2016 election.

Then and currently, DOL regulations provide an exemption from overtime requirements for executive, administrative, or professional (“EAP”) employees who: (1) are compensated on a fixed salary basis, not subject to reduction based on quantity or quality of work (the “salary basis test”); (2) are paid at least \$455 per week, which amounts to \$23,660 per year (the “salary level test”); and (3) perform certain types of duties, as defined by regulation (the “duties test”).

There is also currently an overtime exemption for “highly-compensated employees” (“HCEs”) who earn at least \$100,000 per year, among other conditions. HCE’s are exempt from the Fair Labor Standards Act if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee.

On March 7, 2019, the DOL published a Notice of Proposed Rulemaking, requesting input on proposals to increase the minimum salary requirements for EAP workers from \$455.00 to an unindexed \$679.00 per week, or \$35,308 per year for a full-time employee. This proposal is based on the 20<sup>th</sup> percentile of earnings of full-time salaried employees in the lowest wage census region (the South). These amounts would be updated every four years. DOL estimates that approximately 1.1 million currently exempt employees would be non-exempt and thus eligible for overtime as a result of this proposal.

**Labor & Employment Alert  
March 2019**

The DOL also proposes increasing the HCE salary minimum from \$100,000 to an unindexed \$147,414 per year, \$679 of which must be paid weekly on a salary or fee basis. These amounts would be adjusted every four years. This proposal is based on the 90<sup>th</sup> percentile earnings of full-time salaried employees nationally. DOL estimates that approximately 200,000 would become non-exempt and eligible for overtime as a result of this proposal.

Finally, the DOL also has proposed permitting employers to use non-discretionary bonuses and incentive payments to satisfy up to 10% of the standard salary level. Such payments would have to be made on annual or more frequent basis, but the proposal does include a “catch up” feature with very narrow timelines.

While individuals and organizations may offer comments to the DOL on any aspect of the Proposed Rule, the DOL specifically is asking for public comment on several issues, including its four-year review of the salary levels, and whether the 10% for bonus and incentive payments is appropriate, or if a lower or higher cap is preferable.

Once the Notice is published in the Federal Register, interested parties can give feedback to the DOL within 60 days of the Federal Register publication date at [www.regulations.gov](http://www.regulations.gov), or by mail to:

Melissa Smith, Director of the Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division, U.S. Department of Labor, Room S-3502  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

A Final Rule is not expected until later this year. Stay tuned for final changes to the regulations.

*This alert was prepared by Attorney Geoffrey P. Wermuth. If you have any questions about this alert, please contact the attorney responsible for your account, or call (617) 479-5000.*

\*\*\*\*\*

*This alert is for informational purposes only and may be considered advertising. It does not constitute the rendering of legal, tax or professional advice or services. You should seek specific detailed legal advice prior to taking any definitive actions.*

©2019 MHTL