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Labor and Employment Alert: Department of Labor Proposes to Increase the Salary Threshold to Reduce the Number of Workers Qualifying for Overtime Exemptions

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Today, the U.S. Department of Labor issued a proposed rule that would significantly expand the overtime protections in the Fair Labor Standards Act. The rule would increase the salary an employee must receive before being considered overtime-exempt to \$970 per week – \$50,440 per year (or, \$122,148 for highly compensated employees) in 2016. The DOL also proposes having these salary levels automatically adjust each year to prevent them from becoming “outdated.”

The purpose of the proposed rule is “to update the salary level to ensure that the FLSA’s intended overtime protections are fully implemented, and to simplify the identification of nonexempt employees.” Currently, the FLSA exempts from its minimum wage and overtime requirements executive, administrative, professional, outside sales, and computer employees (commonly known as the “white collar” exemptions). To be exempt, employees must meet certain primary duties tests and be paid on a salary basis of at least \$455 a week (\$23,600 annually) or \$100,000 annually for highly compensated employees. By increasing the salary threshold, the DOL estimates that about 4.6 million currently exempt employees would no longer qualify for the exemptions and thus would become entitled to minimum wage and overtime under the FLSA.

The DOL also believes that increasing the salary threshold may reduce the misclassification of employees as exempt from overtime. According to the DOL, “the salary level test [is] the best single test of exempt status.” In other words, the higher the salary, the higher the likelihood that the employee is primarily engaged in performing exempt duties. Thus, the DOL believes the \$50,440 salary threshold “balances the risks and costs of misclassification of exempt status,” whereas “a low salary level will also increase the role of the duties test in determining whether an employee is exempt, which would increase the likelihood of misclassification.”

Along with an increase in the salary threshold, the notice of proposed rulemaking invites public comment on whether the DOL should revise the duties tests and, if so, what those changes should be. “The duties

remain a critical metric of exempt status.”

The DOL recognized that employers will incur costs from this salary increase because they must become familiar with the new regulations and make adjustments to their workforce. We will report on any developments as this rule moves through the administrative process. In the interim, contact your Vorys lawyer with any questions about navigating these costs.