

U.S. Department of Labor Issues Proposed Rule Amending Salary-Level Requirements for White Collar Exemptions Under The Fair Labor Standards Act

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On August 30, 2023, the U.S. Department of Labor (DOL) issued a Notice of Proposed Rulemaking that would affect certain exemptions with respect to the Fair Labor Standards Act (FLSA) minimum wage and overtime requirements.

Under the FLSA, employees who are not specifically exempt, must receive pay for hours worked in excess of 40 hours in a workweek at a rate not less than one and one-half their regular rate of pay. The proposed rule substantially revises the salary threshold applicable to executive, administrative, and professional (EAP) employees, as well as "highly compensated" employees.

Specifically, the rule proposal would increase the standard salary level requirement for EAP employees from \$684 per week, or \$35,568 annually, to \$1,059 per week, or \$55,068 annually. In addition, the rule increases the salary level for "highly compensated" employees from \$107,432 to \$143,988 per year. DOL has stated that its Final Rule will, by the time of its release, incorporate updated salary data which will bring its standard salary level to between \$57,616 to \$60,209 per year, or even higher, depending on the time between the Notice of Proposed Rulemaking and the Final Rule.

Finally, the proposed rule provides that DOL will update these earnings thresholds every 3 years based on available wage data.

The rule proposal is expected to be published in the Federal Register within days of the August 30 notice, after which it will be subject to public comment for sixty days.

However, the proposed rule will likely face legal challenges. For instance, by incorporating higher salary thresholds, the rule proposal would exclude employees who, in fact, perform exempt work. This would conflict with the statute's text and intent. In addition, although the DOL's triannual review power would make substantive changes to DOL regulations, the rule provides no provision for full notice and comment, potentially violating the Administrative Procedure Act.

Employers should take this opportunity to begin reviewing the propriety of their exempt classifications. Attorneys with the White and Williams Labor and Employment group are monitoring these developments and will update accordingly.

If you have any questions or would like additional information, please contact Ryan Warden (wardenr@whiteandwilliams.com; 215.864.6360), Craig Long (longc@whiteandwilliams.com; 201.368.7207) or any other member of the Labor and Employment Practice Group.

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