



Breaking Law Bulletin

New Proposed FLSA Rules

On June 30, 2015, the Wage and Hour Division of the U.S. Department of Labor issued notice of proposed rulemaking for rules that could dramatically reduce the number of exempt employees under the white-collar exemptions of the Fair Labor Standards Act.

The white-collar exemptions apply to professional, executive and administrative employees, as well as certain computer analysts, programmers and engineers.

The DOL is expected to “fast-track” these regulations and only allow a 60-day comment period. Final regulations are expected to be effective January 1, 2016.

Proposed Changes

The proposed regulations contain the following major changes:

- the annual salary threshold for exempt executive, administrative, professional and computer (“EAP”) employees will increase to \$970 a week (\$50,440 a year), more than twice the current amount
- the annual salary threshold for administrative employees of educational establishments will increase to \$970 a week (\$50,440 a year) or a salary basis that is at least equal to teachers’ entry salaries
- the annual salary threshold for highly compensated employees will increase to \$122,148 a year
- both salary thresholds will increase annually based on a methodology selected after the comment period closes.

The Wage and Hour Division also has requested comments on whether rules pertaining to primary duties of EAP exempt employees should be changed.

The FLSA has many overtime exemptions that are not affected by the proposed rules. For example, certain teachers, licensed physicians, lawyers and judges, and outside sales employees will not be affected by these proposed changes.

June 30, 2015

*FLSA salary
test may double.*



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Also, the Wage and Hour Division has requested comments on the impact of the new rules on “small entities” defined as:

- small, not-for-profit organizations
- small governmental jurisdictions
- small businesses.

“Small entities” are defined using standards from the Small Business Administration. Small governmental jurisdictions are cities, counties, townships, villages, school districts and special districts with populations of less than 50,000.

Recommendations

Employers should immediately:

- review exempt employee classifications to determine which employees will need to be re-classified, and
- consider budgetary impact of the increased salary requirements for the EAP exemptions

to assess the impact of these new rules.

An immediate audit of exempt/non-exempt classifications also is warranted because of the increase in FLSA lawsuits. According to PACER, wage and hour lawsuits have increased over 19% since 2011. Wage and hour lawsuits against employers in the energy sector for the first half of 2015 are double the number filed in the first half of 2014.



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