

Preparing for DOL Proposed Changes to White Collar Exemptions

by James B. Yates and Sarah E. Pawlicki

On July 6, 2015, the Department of Labor published proposed revisions to regulations regarding overtime exemptions. The proposed regulations were drafted in response to President Obama's March 13, 2014, memorandum directing the Department of Labor to update the regulations related to the executive, administrative and professional exemptions to the minimum wage and overtime requirements of the Fair Labor Standards Act.

In order to be considered exempt under the current regulations, an employee must be paid:

- on a salary basis and
- a fixed minimum salary per week of at least \$455 (\$23,660 annually) that is not subject to deductions because of variations in the quality or quantity of work.

Employees must also satisfy the duties tests associated with the various white collar exemptions or meet the requirements of a "highly compensated employee" including receiving at least \$100,000 annually in total compensation. The proposed regulations would:

- increase dramatically the minimum salary level – to \$970 per week (\$50,440 annually) for 2016 and
- call for annual "updates" (increases) to this minimum level based upon either the 40th percentile of all full time salaried workers as tracked by the Bureau of Labor Statistics (BLS) or the Consumer Price Index (CPI).

The final regulations will indicate which indexing methodology will be used. Historically, either indexing methodology would result in a 2% - 3% annual increase. Under the proposed regulations, the highly compensated employee exemption salary threshold would be raised to \$122,148 and be automatically updated annually based on the 90th percentile of all full time salaried workers.



Offices

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699
Phone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 East Broad St.
Ste. 2100
Columbus, Ohio 43215
Phone: 614-564-1445
Fax: 614-280-1777

Findlay Office:

510 South Main St.
Findlay, Ohio 45840
Phone: 419-424-5847
Fax: 419-424-9860

Detroit Office:

615 Griswold, Ste. 1305
Detroit, Michigan 48226
Phone: 313-818-3040
Fax: 313-285-9282

The Department of Labor did not propose changes to the duties tests but instead sought comments regarding whether further narrowing the scope of the white collar exemptions was warranted (i.e. limiting the percentage of time exempt employees can perform non-exempt work). The Department of Labor is also specifically seeking comments on whether the regulations should be changed to allow nondiscretionary bonuses to satisfy the new minimum salary level threshold.

Comments to the proposed changes must be submitted by September 4, 2015, and may be sent electronically to the Federal eRulemaking Portal <http://www.regulations.gov>, reference Regulatory Information Number (RIN) 1235-AA11. In the meantime, employers must carefully consider the legal, financial and human resource issue impacts of the proposed changes on the workplace.

James B. Yates and Sarah E. Pawlicki are members in Eastman & Smith's Labor & Employment Practice Group and are both Senior Professionals in Human Resources (SPHRs) and SHRM Senior Certified Professionals (SHRM-SCPs). Between them, they have over 30 years of experience partnering with human resource professionals to make workplaces better (and legally compliant). If you have any questions regarding the proposed regulations, please contact [Mr. Yates](#) or [Ms. Pawlicki](#).

Disclaimer

The article in this publication has been prepared by Eastman & Smith Ltd. for informational purposes only and should not be considered legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney/client relationship.