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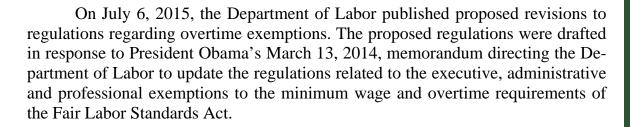
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Preparing for DOL Proposed Changes to White Collar Exemptions

by James B. Yates and Sarah E. Pawlicki



In order to be considered exempt under the <u>current regulations</u>, 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

www.eastmansmith.com

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.

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