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Wage and Hour Division

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Wage and Hour Division

FACT SHEET: PROPOSED RULEMAKING TO UPDATE THE REGULATIONS DEFINING AND DELIMITING THE EXEMPTIONS FOR "WHITE COLLAR" EMPLOYEES

The Department is proposing to update the regulations governing which executive, administrative, and professional employees (white collar workers) are entitled to the Fair Labor Standards Act's minimum wage and overtime pay protections. The Department last updated these regulations in 2004, and the current salary threshold for exemption is \$455 per week (\$23,660 per year). With this proposed rule, the Department seeks to update the salary level required for exemption to ensure that the FLSA's intended overtime protections are fully implemented, and to simplify the identification of nonexempt employees, thus making the executive, administrative and professional employee exemption easier for employers and workers to understand and apply.

Key Provisions of the Proposed Rule

The Notice of Proposed Rulemaking (NPRM) focuses primarily on updating the salary and compensation levels needed for white collar workers to be exempt. Specifically, the Department proposes to:

1. set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers (\$921 per week, or \$47,892 annually);
2. increase the total annual compensation requirement needed to exempt highly compensated employees (HCEs) to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers (\$122,148 annually); and
3. establish a mechanism for automatically updating the salary and compensation levels going forward to ensure that they will continue to provide a useful and effective test for exemption.

The Department's proposal to set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers represents the most appropriate line of demarcation between exempt and nonexempt employees. This salary level minimizes the risk that employees legally entitled to overtime will be subject to misclassification based solely on the salaries they receive, without excluding from exemption an unacceptably high number of employees who meet the duties test. As proposed, this would raise the salary threshold from \$455 a week (the equivalent of \$23,660 a year) to about \$970 a week (\$50,440 a year) in 2016.¹

The Department is also proposing to automatically update the standard salary and HCE total annual compensation requirements to ensure that they remain meaningful tests for distinguishing between bona fide executive, administrative, and professional workers who are not entitled to overtime and overtime-protected white collar workers. Experience has shown that the salary level test is an effective measure of exempt status only if it is up to date.

In addition, the Department discusses the current duties test and solicits suggestions for additional occupation examples and requests comments on the current requirements. Similarly, the Department seeks comment on the possibility of including nondiscretionary bonuses to satisfy a portion of the standard salary requirement. The Department is not proposing specific regulatory changes on either of these issues.

Background

Since 1940, the Department's regulations have generally required each of three tests to be met for one of the FLSA's white collar exemptions to apply: (1) the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed; (2) the amount of salary paid must meet a minimum specified amount; and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations.

Certain highly compensated employees are exempt from the overtime pay requirement if they are paid total annual compensation of at least \$100,000 (which must include at least \$455 per week paid on a salary or fee basis) and if they customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in the standard tests for exemption.

How to Comment

The Department encourages interested parties to submit comments on the NPRM. The full text of the NPRM, as well as information on the deadline for submitting comments and the procedures for submitting comments, can be found at the Wage and Hour Division's [Proposed Rule website](#).

Department will consider all comments received on this proposal in determining the salary level for the Final Rule.

¹ The Department of Labor relied upon 2013 data in the development of the NPRM, under which the 40th percentile of weekly earnings for full-time salaried workers was \$921 per week. These figures project what the salary level would likely be in 2016 based on the proposed rule.

Appeal: 14-2111

Doc. 50-2

Filed: 12/23/2015

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14-2111, viewed 12/22/15