

CLIENT ALERT: U.S. Department of Labor Issues Proposed Rule on FLSA Overtime Exemptions

On September 08, 2023, the U.S. Department of Labor (DOL) published a [Notice of Proposed Rulemaking](#) (NPRM) that would raise the minimum salary level for an employee to qualify as exempt under the Fair Labor Standards Act (FLSA) to the Federal Register. The DOL estimates the new rule would expand overtime protections to 3.6 million workers in the first year after implementation. Notably, the proposed rule change does not alter the “duties tests” for determining whether an overtime exemption may apply.

Under current law, most employees paid less than \$684 per week (\$35,568 annually) must be paid overtime if they work more than 40 hours per week. Workers who are paid on a fixed salary of at least \$684 may be exempt from these overtime requirements if they meet certain job duties tests.

The DOL’s new proposal would boost the minimum salary level from \$684 to \$1,059 per week, the equivalent of \$55,068 per year. The DOL’s proposed rule would also impact the highly compensated employee exemption (which has a significantly relaxed duties test) by increasing its total annual compensation requirement from the current level of \$107,432 to \$143,988 per year.

The salary thresholds for exempt workers have not been adjusted since 2019, despite a significant increase in earned wages. However, the DOL’s proposed rule would automatically adjust the salary thresholds every three years based on current wage data in an attempt to account for changes in economic conditions.

The DOL’s proposed rule is issued as part of a regulatory process through which it is subject to public comment for 60 days. The version that is ultimately enacted may vary slightly if minor changes are made during the review process.

It is likely that should the proposed rule go into effect, it will be faced with court challenges. In 2016, the Obama administration attempted to raise the salary threshold to \$913 per week and raise the highly compensated employee minimum salary to \$134,004 per year. A Federal District Court ultimately blocked that rule after a lawsuit was raised in response to the increase.

While steps remain before the proposed rule becomes effective, employers should begin to prepare for the possibility of these increased salary thresholds and the impact they may have on workforces and employee classifications.

MBJ will continue to monitor these issues for any forthcoming guidance. In the meantime, please contact your MJB attorney with any questions you may have regarding these or any of the other legal changes addressed above.

[Sean P. O’Connor](#), who is a partner with Morgan, Brown & Joy, LLP and Jenna Asarese, who is an associate, authored this client alert. They may be reached at (617) 523-6666 or at jasarese@morganbrown.com or soconnor@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

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