

DOL's Proposed Overtime Rule Fact Sheet - 11/8/2015

Background to the Rule:

- In March of 2014, President Obama [directed](#) the Secretary of Labor to make changes to the [regulations](#) governing exemptions to the Fair Labor Standard Act's (FLSA) overtime pay requirements for executive, administrative, and professional employees (known as the EAP or "white collar" exemptions).
- On July 6, 2015, the Department of Labor (DOL) issued [proposed rules](#) changing certain aspects of the white collar exemptions. The comment period on the proposed rule closed on September 4. While DOL has not released any time table for the final rule yet (they will likely do so as part of the biannual [unified regulatory agenda](#) generally released in November or December), we believe the regulations will be released as early as the 2nd quarter of 2016 with compliance required in the 3rd or 4th quarters of 2016.

Overview of Proposed Changes:

- Under current [regulations](#), an individual must satisfy three criteria to qualify as a "white collar" employee exempt from federal overtime pay requirements: first, they must be paid on a salaried basis (the salary basis test); second, that salary must be at least \$455/week, or \$23,660 annually (the minimum salary requirement or salary threshold); and third, their "primary duties" must be consistent with executive, professional or administrative positions as defined by DOL (the primary duties test) (note, the first two criteria do not apply to [teachers](#) or many [student workers](#)).
- Under the proposed rules, the salary threshold would be increased by **over 100%** to \$970/week, or \$50,440/year, in 2016 (which will represent the 40th percentile of all *salaried* workers). This means any currently exempt employees making less than this threshold would no longer be eligible for "exempt" status. They would be eligible for overtime pay and would have to be paid on an hourly basis regardless of their job title or duties.
- In addition, the proposal would mandate annual updates to the salary threshold based on either the Consumer Price Index for All Urban Consumers or by pegging the salary threshold to the 40th percentile for weekly earnings of all full-time salaried employees.

Higher Education's Concerns:

- Many in the higher education community (18 different associations representing university presidents and HR, finance and other professionals on campus) filed extensive comments on DOL's proposed rule. You can find the comments and more information on the proposal [here](#).
- In the comments, we noted the following:
 - That an increase to the current minimum salary threshold of \$23,660, which was set in 2004, is in fact due, and increasing the threshold will help ensure that the "white collar" exemption is not abused.
 - That said, the proposed minimum salary threshold (\$50,440) is simply too high and, if implemented, will force colleges and universities to reclassify employees in white collar jobs that offer and require significant professional autonomy, have always been exempt and are well suited to exempt status. Such a drastic change is inconsistent with the intent and history of the FLSA and will negatively impact many employees, institutions and students. While hourly pay and nonexempt status is appropriate for certain jobs, it is not appropriate for all jobs; otherwise Congress would not have created any exemptions to the overtime pay requirements.

Impact on Higher Education Institutions, Employees and Students:

- The proposed minimum salary level is so high that many employees working in traditionally exempt jobs would need to be reclassified as hourly workers, causing significant financial challenges for many colleges and universities which would not be able to absorb the increased costs associated with higher salaries for exempt status.
- Mass reclassification would also be detrimental to many employees, resulting in diminished workplace autonomy and fewer opportunities for flexible work arrangements, career development and advancement. Employees may see their loss of exempt status as a demotion as their flexibility and opportunities dwindle but compensation remains the same.
- Many jobs in higher education do not lend themselves to hourly work, and reclassified employees may find it difficult to do traditionally exempt jobs as hourly employees. For example, postdoctoral positions require flexible scheduling practices to accommodate for the success of specific experiments. Hourly work is also impractical for job positions that require significant travel or irregular hours, such as athletic coaches, admissions recruiters, and student affairs and admissions staff.
- Also, as the rule does not provide for prorating of an annual salary to reflect a part-time schedule, currently exempt employees who seek reduced or part-time schedules resulting in salaries below the threshold may no longer be able to be accommodated.
- Administrative and labor costs associated with these changes are massive in a time of limited, fixed and shrinking budgets for higher education.
- Institutions would be under pressure to raise tuition and decrease services to cover the costs of these changes.

Recommendations:

- DOL should consider lowering the proposed salary level for all employers. DOL's proposal is far higher than the levels it has considered in the past and fails to account for regional and industry differences in pay. DOL's proposal is inconsistent with the purpose and history of the minimum salary level to provide a ready method of screening out the obviously nonexempt employees.
 - We recommend that DOL consider lowering the proposed salary level to one of the levels it contemplated in the proposed rule's preamble, which are more in line with historic trends.
 - \$29,172 represents the current level — which was set in 2004 — as adjusted for inflation;
 - \$30,004 would be the salary level if DOL applied the same formula used to update the salary in 2004, which was set to the 20th percentile of earnings for full-time salaried employees in the South and in the retail sector;
 - \$40,352 represents median earnings for all hourly and salaried workers combined (rather than just salaried).
 - Alternatively, DOL should provide lower thresholds for nonprofit and public employers and/or consider expanding the exemption for teachers from the minimum salary level to others integral to the education process.
- DOL should phase in the new salary level over time to allow employers and employees enough time to make adjustments to help mitigate the negative consequences the proposal will impose on colleges and universities, their employees, and students.
- DOL should not automatically update the salary levels as increasing the minimum salary level each calendar year would create serious uncertainty for colleges and universities in their budgeting and planning process and significantly undermine employee morale. Instead, DOL should proceed through the formal notice and comment process when making adjustments to the threshold levels.