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## UNITED STATES DEPARTMENT OF LABOR PROPOSES INCREASING THE SALARY THRESHOLD FOR EXEMPT EMPLOYEES TO \$35,308

On March 7, 2019, the United States Department of Labor released its long gestating plan to increase the number of individuals eligible to earn overtime under the Fair Labor Standards Act ("FLSA"). Under the proposed rule, individuals earning less than \$35,308 per year (\$679 per week) would be eligible to earn overtime.

### Overtime and its Exceptions

The FLSA requires that employers compensate its employees at time and a half for all hours worked over forty (40) in a workweek unless that individual is exempt from earning overtime. Generally, in order to be exempt from overtime, individuals must pass both a duties test and a salary basis test. The duties test requires an employer to establish that the employee is either an executive employee (primarily responsible for managing the company, directs the work of 2 or more employees and has the ability to affect individuals' job status) or an administrative employee (performs office or non-manual work related to the management or operation of the company and exercises discretion and independent judgment). The salary basis test requires that an individual earn above a certain salary on a weekly basis.

### The Proposed Changes to the Salary Basis Test

Under current law, an individual must earn \$23,660 (or \$455 per week) in order to pass the salary basis test. The proposed rule would require an individual to earn \$35,308 per year (or \$679 per week) in order to pass the salary basis test.

### The Impact of the Proposed Rule

The proposed rule would result in more than one million workers becoming eligible to earn overtime under the FLSA. Employers should review the salaries of their exempt employees in order to determine whether their exempt employees would pass the salary basis test under the proposed rule. If there are any exempt employees who would no longer be exempt, employers should determine whether to increase that employee's salary or reclassify them as a non-exempt employee. However, employers should also examine applicable state law as many states, such as New York where exempt employees must earn between \$832.50 and \$1,125.00 per week depending upon location, have a higher minimum salary threshold in order for individuals to pass the salary basis test.

### What's Next

The proposed rule will be published shortly in the Federal Register. Once the proposed rule is published, it will be subject to a 60-day public comment period.

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