

DOL Proposes to More Than Double Minimum Salary Requirement

AUTHOR: SANDBERG PHOENIX

By Thomas Berry

To be classified as an employee exempt from overtime, an employee must perform certain exempt duties and responsibilities, such as those customarily performed by an executive, professional or administrative employee. In addition to performing the requisite managerial duties, an employer is required to pay the individual a minimum guaranteed weekly salary. If the employee does not receive this minimum weekly salary, the employee is treated as an hourly employee, regardless of their duties, and must be paid overtime for all hours worked in excess of 40 hours during the workweek.

Since 2004, the minimum salary amount for an exempt employee was \$455/week or \$23,660/annually. As we previously reported, President Obama directed the DOL in March 2014 to review the current rules addressing the exempt employee requirements, including a review of the present salary amount. On June 30, 2015, the DOL announced that it will officially publish its proposed rule which, in part, it estimates would mandate that employers have to pay an exempt employee a minimum salary of \$970.00/week, or \$50,440/annually, in order to preserve the exemption.

The DOL proposed may be reviewed at the dedicated DOL website. It is important to note that the proposed rule is not final and binding on employers as of this date. Rather, the DOL is required to solicit public comment before finalizing this rule. As announced in the DOL notice of this proposed rule, the DOL will now solicit such comments for 60 days. Thereafter, the DOL must consider the proposed comments before issuing a final rule.

Certainly, the proposed change to the minimum salary amount will garner significant commentary and the DOL will undoubtedly receive substantial responses to the proposed rule. Further, this issue will undoubtedly garner national political attention and debate during the Presidential campaign. While there certainly is no precise manner in which to predict when the DOL will issue its final rule, employers should begin to prepare that the minimum salary amount will likely increase in 2016. For those employees that are presently classified as exempt, but receive a salary significantly less than the amount the DOL is proposing, employers will have to seriously consider reclassifying such individuals as hourly employees and, of course, paying for all hours worked in excess of 40 hours at the overtime rate.

