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Phoenix • [www.cavanaghlaw.com](http://www.cavanaghlaw.com) • Sun City

1850 North Central Avenue  
Suite 2400

Phoenix, Arizona 85004  
Telephone: 602-322-4000  
Facsimile: 602-322-4100

### DEPARTMENT OF LABOR PUBLISHES PROPOSED REGULATIONS THAT WILL MORE THAN DOUBLE THE CURRENT MINIMUM SALARY LEVEL FOR THE WHITE COLLAR EXEMPTIONS AND DOL ANNOUNCES 200 NEW DOL INVESTIGATIONS IN ARIZONA

By Julie A. Pace and David A. Selden  
602.322.4046 and 602.322.4009

#### I. [The Proposed Regulations Would More Than Double The Current Minimum Salary Level For White Collar Exemptions.](#)

On Tuesday, June 30, 2015, the Department of Labor published its proposed amendments to the overtime regulations relating to the white collar exemptions, generally referred to as the Executive, Administrative, and Professional exemptions. The current minimum salary level to qualify for the exemption is \$455/week or \$23,660 per year. The new regulations would increase the minimum salary for qualifying for the exemption to **\$921/week or \$47,892 annually**. This amount is equal to the 40<sup>th</sup> percentile of weekly earnings for full-time salaried workers based on 2013 data. DOL estimates that 11 million more workers will begin being paid overtime under the new regulations (5 million newly exempt employees and 6 million employees currently misclassified as exempt).

The proposed regulation would also increase the minimum salary for Highly Compensated Employee, which is currently \$100,000 per year. Under the proposed regulations, the minimum salary for a Highly Compensated Employee to be exempt would be \$122,148 per year, which would also be adjusted annually.

#### II. [Minimum Salary Levels Would Automatically Be Increased Under The Proposed Regulations.](#)

The proposed regulations also establish a mechanism for automatically increasing the minimum salary levels. DOL has proposed two methods for automatically increasing the minimum salary levels. Under the first proposal, the minimum salary level for the white collar exemptions would be set at the 40<sup>th</sup> percentile of weekly earnings for full-time salaried workers. DOL estimates that using this method, the minimum salary to qualify for the white collar overtime exemptions in 2016 would increase to \$970/week, which is equal to \$50,440 per year. For the Highly Compensated Employee exemption, the minimum salary would be set equal to the 90<sup>th</sup> percentile of earnings for full-time salaried workers.

Julie A. Pace  
602.322.4046  
[jp@cavanaghlaw.com](mailto:jp@cavanaghlaw.com)

As an alternative to the 40<sup>th</sup> percentile/90<sup>th</sup> percentile as a method for automatically increasing the compensation levels that the standard salary and highly compensated employee minimum salaries could be adjusted based on inflation, as measured by the Consumer Price Index. DOL is requesting input on which method to use.

### **III. DOL Also Seeks Public Comments Regarding Job Duties.**

Although the focus of the proposed regulations is increasing the minimum salary level requirements for the white collar exemptions, DOL is also soliciting input regarding the duties tests for the white collar exemptions and possible additional occupations to add as examples under each category. DOL is also seeking comments regarding whether non-discretionary bonuses should be counted towards satisfying the minimum salary level for the white collar exemptions. DOL has not proposed regulations on these issues, but may do so based on the comments that it receives. Changing job duties could have a significant impact on the status of salaried exempt positions.

### **IV. Changes Would Go Into Effect Only After Final Regulations Are Published.**

DOL is accepting public comments for 60 days, which is approximately August 29, 2015. DOL will then issue final regulations, which will likely go into effect no sooner than 60 days after publication in the Federal Register. Therefore it is possible that final regulations will not be implemented until late 2015 or early 2016.

Employers, trade associations, and others have the opportunity to influence the final regulations by submitting comments during the regulatory rulemaking process. Comments can be submitted by mail or via the online portal at <http://www.regulations.gov/>.

### **V. Employers Should Begin To Prepare For The Future Implementation Of The Regulations.**

Although the regulations are not final and the final regulations could set a lower minimum salary, employers should start planning for a dramatic increase to the minimum salary level for the white collar overtime exemptions. An increase that more than doubles the current minimum salary test will have a significant impact on small employers, non-profit agencies, the hospitality industry, and others who have managers, professionals, and administrators who are truly exempt under the current regulations, but are making less than \$50,000 per year.

Employers should review any positions that they currently have classified as exempt under the white collar exemptions. Review the duties tests to ensure that the person satisfies the duties tests. If the employee satisfies the duties tests but makes less than \$50,000 per year, the company should review whether the position generally requires more than 40 hours per week. If so, the company needs to determine whether to increase the person's salary when the final regulations are implemented to maintain their overtime exempt status or whether to make the position non-exempt and track hours worked and pay overtime. Companies should consider whether the duties of the position can be distributed between other employees to minimize overtime.

Keep in mind that the proposed salary level is not final and could be adjusted, including being adjusted downward.

Many employers may take the employees who are currently salaried but will not meet the salary basis test under the proposed regulations and convert them to hourly employees earning overtime. The new regulations do not require that employees earning a salary of less than \$50,000 per year be paid on an hourly basis. Employees may continue to be paid on a salary basis but the employer will be required to pay overtime on the salary if the employee works over 40 hours per week. Companies should consult legal counsel regarding overtime requirements and methods of calculating overtime for nonexempt salaried employees.

Another thing to keep in mind if the proposed automatic increase to the minimum salary level is passed, employees who are near the minimum salary level will be required to be given a raise annually to keep up with the minimum salary increases. Future business planning should account for these automatic increases.

## **VI. [DOL Announces 200 DOL Audits To Be Conducted in Arizona Over The Next Two Years.](#)**

DOL's Arizona Office just announced that it has hired many new DOL investigators and will start auditing companies for compliance with proper and accurate time keeping requirements, ensuring employees have recorded actual start and stop times for work and/or lunch, verifying proper classifications of workers as salaried exempt, salaried non-exempt and hourly, ensuring that employees working piece rate have time cards and are being paid overtime each week in which they work 40 hours or more, that companies are not automatically deducting for lunch, and more. These are some of the items to consider when completing an internal DOL audit.

DOL also is seeking more liquidated damages of double back pay when errors are made and assessing civil monetary penalties when mistakes by companies are discovered. **CONDUCT INTERNAL DOL AUDITS TODAY TO PROTECT YOUR COMPANY!**

Companies also should be completing a review of their positions that are currently classified as exempt from overtime under one of the white collar exemptions, particularly those whose annual salary is less than \$50,000 per year. The Cavanagh Law Firm offers a wide array of legal services involving wage and hour internal audits, creating and implementing agreements and policies and practices related to DOL and wage and hour compliance, wage and hour regulations, Davis-Bacon, and employment law issues including training employers on wage and hour compliance issues and conducting internal wage and hour audits for companies of all sizes.



*Julie Pace's practice handles employment law, handbooks, drug and alcohol policies, I-9 and E-Verify compliance, OSHA, independent contractor and alleged misclassification issues with DES and other government agencies, and defends claims of sexual harassment, employment discrimination, retaliation, whistleblower, and wrongful discharge, and against charges by the EEOC or ACRD. She handles matters involving OSHA, ICE, OFCCP, DOL, NLRB, ADA, FMLA, and wage and hour laws. She regularly provides training to companies and assists with investigations. Julie can be reached at 602.322.4046 or [jp@cavanaghlaw.com](mailto:jp@cavanaghlaw.com)*