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LABOR & EMPLOYMENT LAW ALERT

President Obama Announced Notice of Proposed Rulemaking to Update Regulations for Exempt Employees

On June 29, 2015, President Barack Obama announced that the U.S. Department of Labor (“DOL”) would propose an update to the regulations governing executive, administrative, and professional employees covered by the Fair Labor Standards Act’s (“FLSA”) minimum wage and overtime pay protections.

The DOL last updated these regulations in 2004. The current salary threshold for exemption of the FLSA’s overtime pay provisions is \$455 a week, or \$23,660 per year. With the proposed update, the DOL seeks to increase the salary level required for exemption. The DOL claims that it has proposed this change to ensure that FLSA’s intended protections are implemented and to facilitate the identification of nonexempt employees in order to make the executive, professional and administrative exemptions easier to apply.

Specifically, the DOL is proposing the following:

1. Revise the salary threshold for exemption. The DOL proposes setting this threshold at the 40th percentile of weekly earnings for full-time salaried workers. Should this change, as proposed by the DOL, come into effect in 2016, the projected salary minimum would be \$970 per week, or \$50,440 per year.
2. Increase the total annual compensation requirement for “highly compensated employees” to the annualized value at the 90th percentile of weekly earnings for full-time salaried workers. Should this change, as proposed by the DOL, come into effect in 2016, the projected minimum salary would be \$122,148 per year.
3. Establish a mechanism for automatically updating the aforementioned salary requirements to ensure that they provide an effective test for exemption.

The DOL has requested comments regarding the current duties tests, and additional occupation examples. Similarly, the DOL requests comments on the possibility of including nondiscretionary bonuses to satisfy a portion of the standard salary requirement. The DOL, however, is not proposing any specific regulatory changes to either of these two issues.

The proposed changes, if approved, are not expected to come into effect until 2016. Until this occurs, employers do not have to implement any changes. Employers should be aware, however, that updating the regulations governing overtime pay is an issue of high priority for President Obama and the Secretary of the DOL, the Hon. Tom Pérez.

If you have any questions or comments, or wish additional information regarding the above matters, please contact any of the following attorneys:

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