Don't Fall Behind on Addressing Employee Compensation: Recent DOL Rule Sets Increases to FLSA Minimum Salary Threshold for Nonexempt Employees for Years to Come

September 30, 2024

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Employment Law Monthly

A Department of Labor final rule announced earlier this year increases thresholds for determining whether certain salaried employees are exempt from minimum wage and overtime requirements under the Fair Labor Standards Act, potentially impacting how employers may choose to compensate their nonexempt employees in response.

A final rule announced by the Department of Labor (DOL) this past spring went into effect over the summer and modified the regulations issued under the Fair Labor Standards Act (FLSA) by increasing the minimum salary thresholds required to exempt a salaried executive, administrative or professional from federal minimum wage and overtime pay requirements. The rule also raised the highly compensated employee total annual compensation threshold. Both raises became effective July 1, 2024, with additional raises set to occur in the future.

The FLSA guarantees a federal minimum wage and entitlement to overtime pay to covered, nonexempt employees (independent contractors are not covered). An employee generally is covered by the FLSA so long as the employee is employed by an enterprise with an annual gross volume of sales or business done of $500,000 or more. Certain businesses are subject to FLSA regulations irrespective of the amount of business done, such as hospitals, schools, and public agencies. Even if an employer is not subject to the FLSA on the basis of the size of its enterprise, an employee still may be entitled to FLSA protections if engaged in interstate commerce. Notably, the FLSA does not include any carveout for non-profit organizations, which are subject to the same $500,000 enterprise threshold as for-profit organizations. This enterprise coverage for non-profit organizations considers only the activities performed for business purposes but does not include the organization's charitable activities.

An employee may be exempt from the FLSA's minimum wage and overtime protections if employed in an executive, administrative, or professional capacity (which includes teachers, practitioners of law or medicine, and creative professionals). This is known as the EAP exemption. Outside sales positions, computer employees, and other highly compensated employees also may be exempt. To fall within the EAP exemption, an employee generally must satisfy three criteria:

- Salary basis: be paid a salary—a fixed amount not subject to reduction due to variability in either the quantity or quality of the work performed;

- Salary level: be paid at least a specified weekly salary level; and
- Duties test: perform duties that are primarily executive, administrative, or professional duties.

The DOL rule modified the salary basis element of the above criteria, and is what employers should be careful to consider. Essentially, the rule expands overtime protections for additional lower-paid salary workers through the increased salary thresholds that must be met in order to exempt an employee from FLSA overtime pay requirements. Specifically, as of July 1, 2024, the minimum salary requirement increased from $684 per week ($35,568 annually) to $844 per week ($43,888 annually). The second increase set for January 1, 2025 will further raise the minimum salary requirement to $1,128 per week ($58,656 annually). The minimum annual salary threshold for highly compensated employees increased from $107,432 to $132,964 on July 1 and will raise again to $151,164 on January 1, 2025. The rule also provides for future updates to both of these figures starting on July 1, 2027, and for every three years thereafter at an amount to be determined, reflective of earnings data.

Employer Takeaways

With the fall upon us and the time for year-end raises approaching rapidly, employers should consider how best to make year-end changes to employee compensation in light of the minimum salary threshold increase set to take effect on January 1, 2025. For each employee who is affected by the increased earnings threshold, some of these measures might include the following:

- Increasing salaries of employees to meet the new thresholds and preserve those employees' exempt status, which may be more cost effective than permitting these employees to fall below the newly heightened thresholds and become entitled to premium overtime pay.
- In the absence of increasing salaries, enacting measures to reduce or eliminate overtime pay for newly nonexempt employees.
- In the absence of increasing salaries or mitigating overtime, reducing pay allocated towards base salaries (without falling below the applicable hourly minimum wage) to account for, and offset the effect of, increased overtime pay.

The goal for employers is to strike the right balance between legal compliance, costs, and care for their employees. To achieve that end, employers are encouraged to confer with legal counsel for support in analyzing their existing payroll structure, navigating compliance requirements, and strategizing to help keep their businesses agile during these changing times.