



## KD Employment Alert: Department Of Labor Proposes To Expand Overtime Coverage

By Philip R. Voluck, Keith J. Gutstein & Jessica Tischler

Acting at the behest of President Obama's March 13, 2014 Presidential Memoranda, the U.S. Department of Labor (DOL) recently released a proposed rule which, if adopted, could expand federal overtime coverage to approximately 4.6 million more workers in its first year. That the current minimum salary for an overtime exemption under federal law has not changed in eleven years and falls below the poverty line for a family of four was certainly a motivating factor behind this proposed rule.

Federal law requires that most employees, with limited exceptions, be paid an hourly wage (currently \$7.25 under federal law) and receive one and one half times their regular hourly rate of pay for every hour they work over forty in a workweek. The proposed rule, which would amend the Fair Labor Standards Act (FLSA), addresses what is known as the "white-collar" exemption from the overtime provisions of the FLSA. In order to be exempt from overtime eligibility, the FLSA currently requires that employees in these white-collar roles perform certain job duties and be paid on a salary basis, with the minimum salary for the exemption being \$455.00 per week, or \$23,660.00 per year.

The Department of Labor proposes to tie the standard minimum salary level for exemptions to the 40th percentile of wages for full-time salaried workers, and to automatically adjust this level on an annual basis in order to keep pace with inflation. The projected minimum salary requirement, if the rule is adopted, would be approximately \$970.00 per week (\$50,440.00 annually). The proposed rule would also raise the minimum salary for the highly compensated employee exemption to the 90th percentile of wages for full-time salaried workers, raising it from \$100,000.00 to a projected \$122,148.00. Employees who fall under this exemption need satisfy only a portion of the job duties tests for the white-collar exemption.

Many states already impose a salary threshold higher than \$455.00 per week to qualify for overtime exemptions. For example, New York has increased the salary threshold to \$656.25 per week, and California requires a monthly salary of at least double the state's minimum wage, which currently amounts to a weekly salary threshold of \$720.00. Even these more generous rates would increase if the proposed federal regulations are adopted.

While the DOL does not suggest any changes to the job duties test, it does solicit comments on the efficacy of the current tests and expresses concern that a high number of employees who otherwise pass the current tests spend such a disproportionate amount of time on nonexempt tasks that they are not in actuality "white-collar" exempt employees. This suggests that changes to the job duties tests may still be a part of any final rule.

### What Should Employers Do?

Although a final rule will not be adopted until after the close of the 60-day comment period, employers should take note of the salary level and job duties of any employees who are currently treated as exempt from the overtime requirements and be aware that many of these employees may soon become entitled to overtime pay absent a change in job duties, hours, and/or pay rate. Employers who have questions about the proposed rule and the impact its adoption may have on their business should contact the attorneys in KD's Employment Law practice. An internal audit is always a good starting point to ensure compliance.