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EMPLOYMENT LAWSCENE ALERT: DOL ISSUES PROPOSED RULE CHANGES TO OVERTIME REGULATIONS

On March 13, 2014, President Obama signed a memorandum that launched the U.S. Department of Labor's (DOL) efforts to update the Fair Labor Standards Act's (FLSA) overtime rules for executive, administrative, professional, outside sales, and computer employees, commonly referred to as the "white collar" exemptions. To be exempt from the overtime regulations, employees must meet both a salary basis test and a job duties test. On Tuesday, June 30, 2015, the U.S. Department of Labor (DOL) released the long-awaited proposed rule regarding the expansion of overtime regulations under the Fair Labor Standards Act (FLSA). It is anticipated that, if these rules are imposed, nearly 5 million additional workers would be eligible for overtime under the FLSA's regulations.

The most drastic difference in the proposed regulations is the raise of the minimum salary requirement to qualify for the white collar exemption. Currently, the minimum salary requirement is $455 per week ($23,660 per year), a number that was set in 2004. The proposed rule would increase the minimum salary requirement to $970 per week ($50,440 per year). This figure is equal to the 40th percentile of weekly earnings for full-time, salaried employees. The proposed rule also includes an automatic adjustment to the salary threshold so that the minimum salary requirement does not become outdated. The DOL is also seeking comment on whether nondiscretionary bonuses can be included to satisfy the salary requirement.

Although the proposed rule does not specifically change any of the job duties requirements, the DOL did invite comment on whether or not these tests are working as intended or should be changed. One suggestion is that the federal job duties test would mirror the job duties test from California in which employees have to spend at least 50 percent of their time on exempt duties to qualify as exempt. The current federal test simply looks at a worker's "primary duty" and whether the employee's primary duty meets the requirements of the particular exemption classification. A change in the duties test could also significantly decrease the number of employees who qualify for the overtime exemption.

Once the proposed rule is published, likely in the next few days, there will be a sixty-day public comment period. Only after that will the DOL be able to issue a final rule. Although

employers do not have to do anything at this time and cannot know exactly how these proposed rule changes will impact them until they become final, they should be staying aware of these changes. Once a final rule is published, employers will likely need to reevaluate their exempt and non-exempt classifications for their employees to make sure that they are in compliance with the final DOL rules.