

Wage & Hour Division Proposes New FLSA Salary Thresholds

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On March 7, 2019, the Wage & Hour Division (“WHD”) of the U.S. Department of Labor released its highly anticipated proposed rule on the salary thresholds for determining entitlement to the white-collar exemptions under the Fair Labor Standards Act. Currently, an employee must make a minimum of \$455 a week, or \$23,660 a year, even to be considered for the exemption, regardless of his or her job duties. The threshold for “highly compensated” employees is currently \$100,000 a year. Under the proposed rule, the standard salary minimum threshold will be raised to **\$679 per week, or \$35,308 per year**. The “highly compensated” threshold is proposed to be raised to **\$147,414**. Employers will also be permitted to use non-discretionary bonuses and incentive payments (including commissions) that are paid annually or more frequently to satisfy up to 10% of the standard salary level.

This proposed rule, if adopted, will replace the now-invalidated rule proposed by the Obama administration that was blocked by a federal court in November 2016, shortly before it was to go into effect. That rule would have raised the salary threshold for white collar exemptions to \$913 per week, or \$47,476 a year and the “highly compensated” threshold to \$134,004. The Obama administration rule also provided for the threshold to be automatically updated every three (3) years beginning January 1, 2020. The new rule does not propose such automatic updates.

The public will be given 60 days to comment on the proposed rule before it goes into effect. Although such comments may lead to minor changes to the proposed rule, it is unlikely that it will change significantly before it becomes final. The WHD has already received more than 200,000 comments as part of its July 2017 Request for Information, which informed the drafting of the proposed rule. Because the proposed standard threshold is widely seen as a compromise between the current cutoff and that proposed by the Obama administration, and because Secretary of Labor Alexander Acosta widely telegraphed that the threshold would be set in the \$33,000 to \$35,000 range during his confirmation hearing, a successful legal challenge of this proposed rule seems unlikely.

Lisa Krupicka’s practice is focused primarily on advising and representing employers on a variety of employment-related matters, including employee handbooks, training, wage and hour issues, labor relations, and employee discipline and termination. She also advises businesses on compliance with the accessibility requirements of Title III of the Americans with Disabilities Act. Her litigation experience includes claims for race, sex, age, disability, religious and age discrimination; constitutional claims under 42 U.S.C. § 1983, Title III ADA litigation, ERISA discrimination and benefits claims, as well as wage and hour class actions. Ms. Krupicka is also a frequent speaker on employment-related topics for various professional and industry groups.

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