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PROPOSED OVERTIME RULES COULD MEAN HIGHER SALARIES FOR OHIO'S EXEMPT EMPLOYEES

BY JEFFREY STANKUNAS

Once again, the U.S. Department of Labor (DOL) is considering raising the salary thresholds for white-collar, exempt workers – as well as installing automatic increases every three years – as it pushes new overtime rules.

Under the latest proposed Fair Labor Standards Act rule, the new salary threshold for exempt employees would jump from the current $35,568 to $55,068 annually. That's a sizable increase, but given the pay raises doled out during, and since, the pandemic, it may not have a significant impact for employers.

The salary threshold for highly compensated employees also would jump significantly – from $107,432 to $143,988 annually – under the proposed rule. But because this is an exception less frequently claimed by employers, its significance also will be muted.

Let's remember this is only a proposal for now and will take time to become an official rule. Between now and then, we are likely to see lots of lobbying and court fights, which flared up during the DOL's proposed 2016 increase that was enjoined by a federal court and which resulted in lower-than-initially-proposed thresholds. The most recent update, approved in 2019, took effect on January 1, 2020.

DOL says the latest proposed update is necessary because, "Four years have passed since the 2019 rule, during which time salaried workers in the U.S. economy have experienced a rapid growth in their nominal wages, which lessens the effectiveness of the current salary level threshold."

The government cites the example of low-paid salaried employees working side-by-side with hourly employees, doing the same tasks and often working over 40 hours a week. "But because of outdated and out-of-sync rules," said DOL, "these low-paid salaried workers aren't getting paid time-and-a-half for hours worked over 40 in a week."

DOL argues that its "proposed salary level would help ensure that more of these low-paid salaried workers receive overtime protections traditionally provided by the department's rules."

If DOL is successful, companies will be forced to decide whether to boost salaries for current exempt employees to push them above the new threshold, or convert them to non-exempt status and begin paying them the required overtime. One good aspect of the proposed update is that there are no changes to the standard duties test – the measure by which an employer most frequently determines whether an employee is exempt or non-exempt – keeping it consistent with the 2016 and 2019 rules.

So, what should employers be doing now to prepare? First, review your employee rolls to see who is exempt and non-exempt, ascertain their salary levels, and determine whether the proposed thresholds will have an impact on your exemptions and payroll.

This also is a good time to make certain your employees are currently receiving the correct exemption based on their duties. Just because an employee has the title "supervisor" and/or has a written job description that makes it clear they have exempt duties, that does not automatically qualify them as exempt under the current rules.

Some employers also continue to operate under the mistaken belief that solely because an employee receives a salary, the employee is exempt. That is incorrect.

Another common misconception by employers regards sales staff, most of whom work from home. Companies often take the view that salespeople don't work a full 40-hour work week, so why worry about whether they fit all of the requirements of the outside sales exemption?

But what happens when a sales employee becomes disgruntled after being fired, overlooked for promotion or denied a pay raise? The outcome is often a lawsuit claiming uncompensated overtime – and the rude awakening for the employer who wasn't tracking the hours its sales employee had been working.

Aside from the higher thresholds, some groups also are pushing back at DOL's proposed automatic updates to those thresholds every three years. The Society for Human Resource Management (SHRM) argued against the proposal, saying it "could cause an undue financial burden on businesses."

In addition to raised salaries for some exempt workers and higher overtime expenses, SHRM argued the proposal could lead to increased costs for workforce analysis, communications and potential salary adjustments further up the organizational hierarchy to alleviate salary compression issues.

The bottom line is the proposed rule is just that, a proposal, but should it become official it will have a large impact. DOL notes the new rule would affect about 3.4 million workers and result in a first-year income transfer of $1.2 billion from employers to employees. So, stay tuned and get ready!

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